(8)

Supreme Court, U.S.
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No. 04-5462

In The Supreme Court of the United States

RONALD ROMPILLA,

Petitioner,

v.

JEFFREY A. BEARD, Secretary,
Pennsylvania Department of Corrections,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

JOINT APPENDIX
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IN THE COURT OF COMMON PLEAS
OF LEHIGH COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	)	NO. 682/1988
vs	)	Jury Trial November 1, 1988
RONALD ROMPILLA	)	

VOLUME VI
VERDICT AND NOTES OF TESTIMONY
HEARD BEFORE THE
HONORABLE DAVID E. MELLENBERG, J.

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[3] (Court called to Order)

THE COURT: Very well, let the record reflect the Court has been informed that the Jury has arrived at a verdict. Now, you may bring the Jury in please and the record should also reflect that the Defendant is present

along with his Co-Counsel as well as the Prosecutor and the Assistant District Attorney.

(Whereupon the Jury enters the Courtroom)

THE COURT: Now, ladies and gentlemen, I understand you have arrived at a verdict, is that correct?

FOREMAN: Yes.

THE COURT: The clerk will receive the verdict please.

(Whereupon roll call of Jurors was taken)

THE COURT: Very well, the clerk will read the verdict and if the Jury agrees with it, it will be entered as a verdict of this Jury.

CLERK: Commonwealth of Pennsylvania vs. Ronald Rompilla, Case Number 682 of 1988. And now, November 1st, 1988, we the Jurors empanelled in the above [4] case, find the Defendant, Ronald Rompilla, guilty of Criminal Homicide. We find the Defendant guilty of Murder of the First Degree. Count 2, Burglary, Guilty of Count 2 Burglary, Guilty of Count 3, Criminal Trespass, Guilty of Count 4, Theft, Guilty of Count 5, Receiving, Guilty of Count 6, Robbery.

THE COURT: Now, Count 7 and 8 are not filled in, was that –

FOREMAN: They were the same. That was my mistake.

THE COURT: You're saying they were all guilt – that was guilty, too.

FOREMAN: Correct.

THE COURT: That was an oversight you're saying?

FOREMAN: Exactly, they were all guilty.

THE COURT: So say you all then as to all 8 Counts.

JURY: (Nods affirmative).

THE COURT: Very well. Let the –

MR. CHARLES: Your Honor, I'd like the Jury polled.

THE COURT: As to –

MR. CHARLES : May we approach?

THE COURT: Very well. The Jury may be [5] seated please.

(Whereupon Counsel approach side-bar)

MR. CHARLES: First, I would like the Jury polled, and I would like to know whether or not they found him guilty as an accomplice or as an actor in this matter, in reaching their decision on First Degree.

THE COURT: They were instructed not to. Now, I'm not sure – what's the basis for that?

MR. CHARLES: Well, I know they were considering it. I'd like to know whether they considered him as acting as an accomplice or as an actor.

MR. MOYER: I don't think there's any basis for that.

MR. CHARLES: I think it – it'll not only will become – it's not only important now, it would become important on the next phase. I would like to know what, in reaching their verdict, whether or not they have found him to be an actor or an accomplice in reaching their verdict of guilty of the First Degree.

THE COURT: I, initially, the answer is no. I think –

MR. MOYER: They would have to be excused to deliberate again on that question, and they would have [6] to actually return a verdict on that, and I would object to that.

THE COURT: Well, you – first of all, you'd like to have them polled?

MR. CHARLES: Yes, I'd also –

THE COURT: As to every one?

MR. CHARLES: Yes, as to the charges, yes.

MR. MOYER: I have no objection to them being polled, but I think they can be polled and answer of one because all the verdicts are the same. They can answer one –

THE COURT: Do you have any objection to that?

MR. MOYER: – verdict for all charges.

THE COURT: How do you find the Defendant guilty –

MR. CHARLES: I would like the Murder in the First Degree mentioned, not just all the – and the rest of the charges.

THE COURT: All right.

MR. CHARLES: I'd like Murder in the First Degree.

THE COURT: All right. You're entitled to that and ask that specifically and as to all of the charges?

[7] MR. CHARLES: Yes.

THE COURT: All right. And then what we'll do, hold your Motion –

MR. CHARLES: Okay.

THE COURT: – in abeyance. When we adjourn, we can see – discuss it.

MR. CHARLES: Okay.

THE COURT: All right?

MR. CHARLES: Okay.

(Whereupon side-bar conference concludes)

THE COURT: Now, if I understand you ladies and gentlemen, just so that I – the Court now then will – if I understand you correctly, enter the word Guilty as to Count Number 7 and Guilty to Count Number 8, and you say that was an inadvertence. We will be polling the Jury as to your findings at this juncture. I instructed the clerk to pose the question as to how do they find with respect to the Criminal Homicide in Murder of the First Degree,

Guilty or Not Guilty and as to all other charges, Guilty or Not Guilty, all right.

(Whereupon the Jury is being polled)

[8] THE COURT: All right. We will recess with respect to a Motion that's before the Court so that the Court has an opportunity to review and consider.

MR. MOYER: Your Honor, before we recess, I would ask that the verdict be recorded as it has been stated by the Jury.

THE COURT: Well, I think I already instructed that if the Jury agrees with the verdict, it shall be recorded as the verdict of the Jury. I think I originally said that, did I not?

MR. MOYER: I don't remember.

THE COURT: I usually do. I usually preface my – the polling of the Jury with that remark. In any event, if I didn't, let the record reflect that this was the Jury – the verdict of the Jury, all right. We're going to take a recess, I think until 11:00 o'clock. Mrs. Haas, could I see you up here a second? I would like the Jury to remain because the Motion that is before the Court may very well concern you. Get coffee and doughnuts and what have you, I don't know.

MS. HAAS: Okay.

THE COURT: All right, Mr. Schaeffer, we will take a recess until 11:00 o'clock.

COURT CRIER: All rise please, this Court will be in recess until 11:00 o'clock this morning.

[9] (Whereupon the Jury leaves the Courtroom)

(Whereupon the Court is in recess)

COURT CRIER: All rise please, this Court is again in session, you may be seated.

THE COURT: All right.

MR. CHARLES: Your Honor, did your – did your Honor want to put on the record your response to my Motion to have an Interrogatory sent out with the Jury to determine whether they found the Defendant Guilty of Murder in the First Degree as an actor or as a – as an accessory – as an accomplice basically, not an accessory as an accomplice.

THE COURT: Very good, Motion denied. I have no – that's fine, Motion denied. Now, you may bring the Jury in please.

MS. DANTOS: Well, wait, he's in handcuffs.

MR. CHARLES: Your Honor, –

MS. HAAS: Judge, –

MS. DANTOS: Judge, the Defendant's in handcuffs. Can we have the handcuffs removed before the Jury comes in?

THE COURT: Pardon?

MR. CHARLES: Your Honor, –

[10] MS. DANTOS: Judge, can we approach the bench for a minute.

(Whereupon Counsel approach side-bar)

MS. DANTOS: Bring the Jury in – what are we bringing the Jury in for?

THE COURT: I have to let them know what's going on.

MS. DANTOS: Okay.

THE COURT: We're going to be imposing on them for rest of the day, tonight, tomorrow morning. I think they're entitled to know that.

MS. DANTOS: Okay. But as far as –

THE COURT: Would like to tell them logistics of what we're going to do.

MS. DANTOS: Okay, but as far as my objection to his aggravating factor, we're going to do that at 1:30, correct?

THE COURT: Oh, we're going to rule on that, right.

MS. DANTOS: Okay. So, we're just bringing the Jury in to tell them what's going on.

THE COURT: Right, that they will be taking a lunch again.

[11] MR. CHARLES: What about the request for additional time –

MS. DANTOS: Yeah, I'll put a request on the record that I'm requesting on behalf of the Defendant that we have a break, and that we do not begin the penalty phase until tomorrow morning.

THE COURT: Well, I'll tell you what we'll do, you have until 1:30, of course, and prepare for his side. We're going ahead with the Commonwealth's side at 1:30, and I will grant then, if, indeed, he finishes early, we will

then let you go tomorrow morning, all right. Very good, all right.

(Whereupon side-bar conference concludes)

THE COURT: Lunch has been ordered, I understand.

MS. HAAS: Yes. Did you say you're going to put them up tonight again?

THE COURT: I'm afraid I have to.

MS. HAAS: You know what, you're going to have a problem with Juror Number 2.

THE COURT: Why?

MS. HAAS: Because he's a diabetic, and he said he can only stay over one night, because he said he [12] has other stuff at home that he does every other day or whatever the case may be. When I heard you say that –

THE COURT: Uh-oh. May I see Counsel up here –

MS. HAAS: And he never said this till he was –

THE COURT: Pardon?

MS. HAAS: He never told us this till he was empanelled or anything, you know.

THE COURT: All right.

(Whereupon Counsel approach side-bar)

THE COURT: There is a problem, I knew it, this is what I told you.

MR. MOYER: What's the matter?

THE COURT: Juror Number 2, says he cannot stay two nights in a row. He's the diabetic, he's the one who says he has other things he must take care of, and he can only do it at home.

MR. MOYER: Well, if the Defendant has no objection to the Jury being excused and being brought back – not being – than not being sequestered, then obviously, I think we're okay if the Defendant does not object. If he objects, then – then we don't have a choice.

[13] THE COURT: And I think the Defendant should be brought into the discussion.

MS. DANTOS: Well, why don't we talk to him?

MR. MOYER: Yeah, why don't you talk to him first.

THE COURT: Talk to him because he's going to have to put on the record, too, in all fairness.

MR. CHARLES: What are the – what are we talking about? What are the alternatives?

MR. MOYER: Either sequestered or –

THE COURT: That's it.

MR. MOYER: – they're not sequestered tonight.

THE COURT: Yeah. He wants to sequester, but he says he can't do it because of health reasons and if that's something, again, we go right ahead, that's the end, you finish today then.

MR. CHARLES: Finish today?

THE COURT: If, indeed, that's the case. I am not going to jeopardize this whole trial or this Jury because of that, I can't.

MR. MOYER: What – off the record.

THE COURT: You suggested before, though, that you were willing to waive the sequestration –

[14] (Whereupon proceedings are off the record)

COURT CRIER: Court is again in session, you may be seated.

THE COURT: Now, what do we have, Mr. Charles?

MS. DANTOS: Your Honor, we have no problem with letting the Jury go tonight to go home rather than be sequestered.

THE COURT: So, they don't have to be sequestered.

MS. DANTOS: Correct.

THE COURT: As I indicated the reason being one of health –

MS. DANTOS: Health.

THE COURT: – for, I think, one of the Jurors in any event.

MS. DANTOS: And I have explained that to the Defendant, and he is in agreement.

THE COURT: Mr. Rompilla, do you understand, we will not then sequester the Jury, and we'll start the hearing this afternoon with respect to the Commonwealth

and continue the matter until tomorrow morning then, upon their completion of their side of the case. You have no objection to then excusing the Jury with [15] instructions, of course, that they are not to read anything in the newspaper, appears in television, that I can do but that's about the only thing I can do under the circumstances, do you understand that?

MR. ROMPILLA: I understand.

THE COURT: Are you willing to waive that then?

MR. ROMPILLA: Yes.

THE COURT: Very good.

MR. MOYER: Judge, I think the record should also reflect that there was a conference held with Defendant, and his two Attorneys in a Conference Room that lasted about a minute, minute and a half, would that be accurate?

MS. DANTOS: Yeah.

THE COURT: All right, very well, the record should so indicate. You may bring the Jury in.

(Whereupon the Jury enters the Courtroom)

THE COURT: Now, ladies and gentlemen, as you know, you have found the Defendant Guilty of Murder in the First Degree, and your verdict has been recorded. We will hold a Sentencing Hearing, and we'll commence that at 1:30 during which Counsel may present additional evidence [16] to you and argument, and you will then decide whether the Defendant is to be sentenced to death or life imprisonment. Whether you sentence the Defendant

to death or to life imprisonment, will depend upon what, if any aggravating or mitigating circumstances you find are present in this case. In loosely speaking, when I say that, I mean loosely speaking, aggravating and mitigating circumstances are circumstances concerning the killing and the killer which make it First Degree Murder case either more serious or less serious. The Crimes Code defines more precisely what constitutes aggravating and mitigating circumstances. Although, I will give you a detailed instruction with regard to this aspect of the matter later in the hearing. I will tell you now that aggravating circumstances must be proved by the Commonwealth beyond a reasonable doubt as did the same burden apply with respect to everything else in this case with respect to the Commonwealth. That serves – same burden applies in this Sentencing Hearing. While mitigating circumstances must be proven by the Co – the Defendant by a Preponderance of the Evidence. A Preponderance of the Evidence is a less heavy and severe burden than by beyond a reasonable doubt burden. I, again, that will be more definitively defined at the Hearing this afternoon when we ultimately charge in this matter. You will be kept together, again, for [17] luncheon. We will commence the hearing this afternoon with the Commonwealth's side of the case and depending how far we go, but we will recess some time this afternoon and finish the case tomorrow. You will be excused to go home over the night by agreement of both the Defendant, his Counsel, as well as the Commonwealth's Counsel. You will go, of course, with the same instructions that you've had heretofore with respect to everything in this trial. You are instructed not to read anything that might appear in the newspaper about this case and about any circumstances surrounding this case or this Defendant and that applies this afternoon when you go for lunch,

same circumstances apply. Indeed, if you go home tonight, you are instructed, also, not to view anything that might appear in the newspaper – I mean on television or on the radio. Now, with that general – again, same admonishment that I've given you in the past, we will adjourn then until 1:30 and we've already made reservations for luncheon. Very good, all right. All right, Mr. Schaeffer, we will adjourn then until 1:30.

COURT CRIER: All rise please, this Court will adjourn until 1:30 this afternoon.

(Whereupon Court is adjourned until 1:30)

[18] (Conference which takes place in Chambers)

THE COURT: All right, now, you asked for this hearing for what purpose?

MS. DANTOS: For the purpose of attempting to exclude, first of all, the transcript and the Burglary and Rape Convictions from coming in at this point. First of all, the Law is clear that on aggravating factor, there has to be – it has to be a crime involving violence. The crime here –

MR. MOYER: Or threat of violence.

MS. DANTOS: I'm – let me finish.

THE COURT: Let her argue, all right.

MR. MOYER: Well, that's not accurate statement though.

MS. DANTOS: Well, your Honor, –

THE COURT: You can argue that, all right, go ahead.

MR. MOYER: All right.

MS. DANTOS: The violent act, you have a Burglary, you have a Burglary, you have to look at the category of the crime. A Burglary is a crime of entry, okay, with the intent to commit a crime inside. I believe Mr. Moyer could argue that a Burglary can be violent, I don't know. I haven't found that, but to say that someone's [19] committing a Burglary and while busting in the door they hurt someone, okay, maybe that's a crime of violence involving the Burglary. In this case, there's a Burglary, entered the Bar, the Rape is a crime of violence, I'll submit that, that's clear. I think we all agree that one conviction of a crime of violence is not enough for this aggravating factor. There has to be two. The Burglary by itself is not a crime of violence. The only reason to bring that in and to read the transcript from the Rape to the Jury to substantiate the charge of violence on the Burglary would do nothing but inflame the Jury on the Rape. The Rape is not enough, that's the only crime of violence we have here. Burglary is not a crime, it's a property crime.

THE COURT: That it?

MS. DANTOS: For now.

THE COURT: For now, you mean there's more – more to come, all right.

MR. MOYER: Is that it? Is that it Maria?

MS. DANTOS: Go ahead.

MR. MOYER: Is that it?

MS. DANTOS: Well, I do have a case.

MR. MOYER: Well, see, I want to make sure that's it. I don't want to interrupt you.

THE COURT: You have a case?

[20] MS. DANTOS: Yes, Commonwealth vs. Christie.

THE COURT: Right.

MR. MOYER: That's the same one I gave to you –

THE COURT: Right.

MS. DANTOS: Okay. Regarding a Burglary not being a crime of violence.

THE COURT: Okay, true. No question it does say that but then it goes on to say that, "threat of violence, in order for a felony to be includable, the Commonwealth must present evidence that the Defendant actually threatened another with violence or actually use violence on another."

MS. DANTOS: Correct.

THE COURT: Now, 97, – but now you notice that they say, "in order for a felony to be included under 9711 D.9," okay, that's an aggravating – now, they don't say that they mean Burglary here though either, do they?

MS. DANTOS: Well, your Honor, they're discussing the Burglary and two Escape Charges but –

THE COURT: Up to that point.

MS. DANTOS: Correct.

THE COURT: But they don't say that if you do show Burglary, you must show – you can also show then, [21] actual threatened another with violence or actually used violence on another.

MS. DANTOS: You must show that on the Burglary.

THE COURT: All right.

MS. DANTOS: Before he gets to use that.

THE COURT: Okay, that's your point. Now, –

MR. MOYER: I agree. I mean, the fact that its a Burglary in it of itself doesn't make it a crime and the Statute says, and I'll read the Statute, "the Defendant has a significant history of felony convictions involving the use or threat of violence to the person." So, you don't have to actually use violence, you can just threaten to use violence.

MR. CHARLES: But that, Judge, that's to the first –

MR. MOYER: Now, can I finish.

MR. CHARLES: That's to the –

THE COURT: All right.

MR. MOYER: Now, can I finish?

THE COURT: That's right now, we shut him up when –

MR. MOYER: Now, this case – in this case, the Commonwealth said, okay, we're going to present these [22] crimes, Escape and Burglary and nothing more did

they present on it. The Court said, you just can't present a Burglary, you've got to show – the Commonwealth has a burden to show that that Burglary involved threat of violence or violence itself, because it says here, force is not an element of either of these crimes. Indeed, both crimes can be committed without even encountering another person, no question about that. Every felony has the potential for violence if the actor is caught. This, however, is not what the Legislature intended by the words "threat of violence". In order for a felony to be included, the Commonwealth must – must present evidence that the Defendant actually threatened another with violence or actually used violence on another. We're under a duty to show that the Defendant used violence, because its not a crime in it of itself that has to do with violence, and I have a transcript from that trial. You know, I don't think the Burglary ends once the Burglar gets into the house or into the building. The Burglary takes place even after the entry and if there's any violence whatsoever that takes place during that Burglary, then that Burglary involves violence and in this particular case, Rompilla enters into the bedroom of the victim. She – this is her testimony "and I picked up my head to see what the noise was, and I seen a man walking toward me," and he [23] says, "face down on the pillow, I have a gun on you."

Question: Can you identify that man?

Answer: Yes, I could now.

Question: Who came in and would you point to him?

Answer: That gentlemen there (indicating).

Let the record show that the Witness pointed to the Defendant, Ronald Rompilla.

MR. MOYER: Judge, that is a clear case of violence or the threat of violence being used in this Burglary. In addition, afterwards, the Defendant proceeds to Rape this woman after burglarizing into the hou – in the bedroom, he rapes the woman. What more evidence is there of the use or threat of use of violence?

THE COURT: Now, the Burglary Charge as – in the raw, did – the purpose – the entry of the building for what purpose?

MR. MOYER: Well, –

THE COURT: To commit a crime but what crime?

MR. MOYER: Exactly.

THE COURT: But what crime?

MR. MOYER: I checked the Indictment on that, Judge and there was an Indictment, and it wasn't specified. All the Indictment said was, to commit a crime therein. It didn't specify whether it was threat or rape [24] or whether it was theft, rape or what it was. My position is, it doesn't matter because there was violence during the Burglary. I mean, once a Burglar enters into a home – enters into a house or a home, the Burglary doesn't stop then, he's still in the process of committing that Burglary. He's still in the process of trying to commit a crime that is his intent to commit when he gets into the house. So, I mean, it's all ongoing process.

THE COURT: You're saying that the initial crime that he went in there for that when he held a gun to her head?

MR. MOYER: This what – yeah, this is what he says, "face down on the pillow, I have a gun on you." And then he goes on to steal money from her and from the Bar. Then after taking the monies when he rapes her. My position is, that he goes in there not to rape her but to steal, that's the burglary, and he uses a threat with a gun and then he has the knife, and he uses the knife on the woman during the rape. I contend that the threat of – or the use of violence is not only the rape but also the aggravated theft, the robbery of her even though she's not – he's not charged with that, I mean, that was a Robbery.

MS. DANTOS: Well, he's not charged with that, Judge, –

MR. MOYER: I understand that.

[25] MS. DANTOS: – and I disagree that –

MR. CHARLES: Clearly –

THE COURT: Well, he entered for the purpose of committing a crime –

MS. DANTOS: Right and that's –

THE COURT: – in this case, it is an aggravating crime though, would you agree with that?

MS. DANTOS: Judge, – well, Judge, no because a Burglary is a crime of entry. A Burglary is not at all – if he commits a crime in there, he's going to be charged with that crime.

THE COURT: That's true, but you can enter a building for the purpose of stealing diamonds or you can be entering a building for the purpose of raping a woman –

MR. MOYER: Assaulting her.

THE COURT: – a robbery, now, there's a difference between the two in my mind. I think the one – the Burglary is now a crime of violence, could be.

MR. MOYER: In addition, Judge, the crime – the Firearms Statute lists Burglary as a crime of violence.

THE COURT: Well, the potentials there, there's no question in my mind. Okay, is that your argument? Okay, we'll permit it, Motion denied. Now, what else do you have? What else are you going to show? Do you [26] have any other motions?

MS. DANTOS: That's it, Judge.

THE COURT: That's it?

MS. DANTOS: I object on the record. For the record, I think it's clearly erroneous to let –

THE COURT: All right.

MS. DANTOS: – this in. The crime is a Burglary, its not a violent crime. The violence is the rape.

THE COURT: Well, I would agree except if he's going to carry it through, he would have to before I would permit it, and he says he's going to.

MS. DANTOS: Well, –

MR. MOYER: I'm going to read from the Statute, to prove that it is a crime of violence.

THE COURT: All right.

MS. DANTOS: Let me clear up one thing.

MR. MOYER: And that – the Christie Case says clearly, every felony has the potential, therefore, for every felony that in it of itself is not a crime of violence, Commonwealth has a duty to show that it was a crime of violence, and we have to put on this evidence.

THE COURT: Okay.

MS. DANTOS: What – let me ask one question. Was the Burglary Charge – what was he alleged [27] to have burglarized, the Bar?

THE COURT: No, he's just – he entered the building for the –

MS. DANTOS: Wait a minute, wait a minute.

THE COURT: – purpose of committing a crime.

MR. MOYER: Well, I don't know. Did you check the Indictment?

MR. CHARLES: Let's get the Indictment, your Honor. I don't know –

MS. DANTOS: Because that's my point, Judge. He – he's charged with committing a Burglary because he entered the Bar –

MR. MOYER: No, he was –

MS. DANTOS: – and then the woman lived upstairs and that's when the rape occurred.

THE COURT: Yeah, but not the rape, there's something bef – oh, he went upstairs and – all right.

MS. DANTOS: But the Burglary he was charged with –

MR. MOYER: He did upstairs – or got in upstairs somehow.

MS. DANTOS: – if he was charged and sentenced on the Burglary for entering the Bar, then you cannot tie that into a crime of violence.

[28] MR. MOYER: Judge, that is – really makes no difference whatsoever.

MS. DANTOS: Yes, it does.

MR. MOYER: Well, I know that's what your argument is. My argument is, that it doesn't make any difference and if I recall, because I looked at the Indictment over lunch, that it just listed the address. It did not specify either the Bar or the bedroom. I'm not sure about that. I made a copy of the Indictment, but I don't know if I have it with me.

THE COURT: Well, are you – do you have – what is it?

MS. DANTOS: I don't have a copy of the Indictment.

THE COURT: Well, if it's just the address, I'm not quite sure you're correct. The conclusion reached is, it's only the Bar.

MR. CHARLES: Your Honor, –

MR. MOYER: It doesn't – my position is that it wouldn't make any difference –

THE COURT: Well, I mean if that is the case –

MR. MOYER: – because the Burglary is an ongoing thing.

THE COURT: – then there is no merit to [29] their argument.

MR. MOYER: The Burglary doesn't end once you've gained entrance, that's their position. That once he's gained entrance, the burglary stops.

THE COURT: And if that were true, then I'd have to agree with your argument. In other words, if that's all that happened, he just entered for the purpose and then done nothing more and that's what your argument is. Now, you must go ahead with something –

MR. MOYER: But the burglary is ongoing, once he enters, once he commits the crimes there that it was his intent to commit in there.

MS. DANTOS: That's not –

MR. CHARLES: That's not true.

MR. MOYER: And that's the Rape and also the Theft.

MR. CHARLES: Your Honor, if he breaks in –

MR. MOYER: Who's making the argument? Is it going to be Maria or you or both of you.

THE COURT: Yeah, we're going to have to make up our minds here now, we're getting back into that same territory. One of these days, you're going to make up your mind, not both, one or the other.

MR. CHARLES: All right.

[30] MS. DANTOS: Judge, Burglary is an entry with the intent to commit a crime.

THE COURT: Okay.

MS. DANTOS: Burglary is an intent, okay, –

THE COURT: I understand.

MS. DANTOS: – you enter with an intent. You're – you're guilty of Burglary, all right.

THE COURT: All right.

MS. DANTOS: Whatever crime is then committed, is a separate crime.

THE COURT: Correct.

MS. DANTOS: Right. So, if he was charged with burglarizing by entering the Bar and then was charged with the Rape –

THE COURT: Well, you and I differ. If you enter – if it depends on what you're entering and what you intend to commit as far as a crime.

MS. DANTOS: To commit a crime.

THE COURT: Well, now there's a difference as I said. In my mind, if indeed, he was going there to fondle a little 13 year old girl, and it's not a violent thing say –

MS. DANTOS: Right.

THE COURT: – that's different than when [31] you go in and to rape somebody –

MS. DANTOS: Well, it –

THE COURT: – or hold a gun to somebody's head.

MS. DANTOS: Well, I think we need to look at the Indictment then. If he's charged with committing the Burglary –

THE COURT: Well, all right but you're going to get that up here –

THE COURT: – we'll take a look at it at that time.

MR. MOYER: I had a copy, and I forgot to bring it up with me.

THE COURT: All right.

MR. CHARLES: Can we see it, Judge?

THE COURT: Sure, he's going to get it.

MR. MOYER: It's a public record, Fred, you could have gone over lunch and looked at it just like I did.

THE COURT: Well, is she bringing it up?

MR. MOYER: Who, Doris?

THE COURT: Yeah.

MR. MOYER: Yeah, I had her bring up the whole file.

THE COURT: Okay; so it's over there now. [32] Let's take a look at it then but anything else, though, is that the end of your –

MS. DANTOS: Yes, Judge.

THE COURT: All right. And you intend – what else do you intend to show by way of aggravating circumstances?

MR. MOYER: Well, I'm going to have Mihalakis testify as to the substantial pain for the torture and that's it. So, I have Doris Glaessman, Jim Beltz, the reading of the Transcript of the victim and one of the other witnesses, and Mihalakis.

THE COURT: Are you going to – and then you're going to rely upon the – is he going to testify again as to the number of stab wounds?

MR. MOYER: That will come out, sure.

THE COURT: Okay. What about the burning?

MR. MOYER: Well, he'll testify to it, sure.

MR. CHARLES: Is there going to be a repeated testimony he had on direct?

THE COURT: Well, that's why I'm asking.

MR. MOYER: I'm sure there'll be some overlapping, of course. Of course there will.

MS. DANTOS: Judge, I have one other point.

THE COURT: Okay.

[33] MS. DANTOS: For the record I object to any reading of the Transcript. I don't think it's necessary. Rape is a crime of violence, we agreed to that. To read that in, is seriously prejudicial to the Defendant.

THE COURT: Well, now wait a minute. I agree, the Rape – you're not going to go into the rape, you're going to go into the gun at the head. That's what you're talking about, right?

MR. MOYER: No, because the Rape is part of that violence also, Judge, that's our position. Not only the theft of the money but the rape, as well, is part of the violence of this Burglary.

MS. DANTOS: And it's not –

MR. MOYER: We've got a duty to show that that Burglary was violent. There was violence or threat of violence to the person, and I can do that with the Rape and also with the gun, and I – that's what I intend to do. Now that – I think that's clear.

MS. DANTOS: Judge, –

MR. MOYER: How else am I going to show that it's violent?

MS. DANTOS: Judge, Rape by the nature of the charge is a crime of violence. To allow him to read in portions of the testimony from the Rape Trial, is nothing [34] further than to inflame the Jury, and it's seriously prejudicial against the Defendant.

THE COURT: Yeah, but isn't that the whole –

MS. DANTOS: It has – it serves no purpose.

THE COURT: – purpose of this penalty?

MS. DANTOS: No.

THE COURT: No.

MS. DANTOS: It doesn't –

THE COURT: You have some Law on that?

MS. DANTOS: What purpose does it serve – they do not have to put on the fact from – they have a

record of a conviction, they have a record of his sentence, they have a record that he was convicted of Rape, that's all they need to put on for the crime of violence.

MR. MOYER: For the Rape, that's true but for the Burglary, we have to put on that violence. We have to prove and Christie so instructs us that we have to show that that's a violent crime.

MS. DANTOS: Right, and can't you –

MR. MOYER: And that's what we're doing.

MS. DANTOS: – get that from showing just the gun? What purpose does it serve?

MR. MOYER: Why handcuff the Commonwealth? [35] shouldn't this Jury know the type of violence that this man is? Shouldn't they know how significant it is that the facts of that case are frighteningly similar to the facts of this case? The Bar, the knife, the stealth that was used by the Defendant.

MS. DANTOS: No, because –

MR. MOYER: I think those are all significant factors which go to the significant history. Not just the history but a significant history and the significance is, that they are very similar crimes, Judge.

MS. DANTOS: Your Honor, it doesn't matter whether they are or not, it's an aggravating factor. He has to show that there are significant number of convictions involving violence, not that they're similar in nature. That has nothing to do with it.

MR. MOYER: I don't think that's true and there's case law on that that significance doesn't have to

do with the number, but it also has to do with the type of crimes.

MS. DANTOS: Judge, can I request that you review the Transcript first?

MR. MOYER: I have no objection to that.

MS. DANTOS: I would also like to review whatever he's going to read from.

MR. MOYER: Well, I told you that I was [36] going to do this a long time ago. You certainly had the opportunity to review the Transcript and –

MS. DANTOS: Well, I would imagined you –

THE COURT: Is this the whole thing? Are you going to have this whole thing read?

MR. MOYER: That's her testimony.

MS. DANTOS: The entire Transcript.

MR. MOYER: Of the victim.

MS. DANTOS: That's –

MR. MOYER: The original is being brought up by Doris Glaessman.

THE COURT: Off record.

MR. MOYER: Obviously, that's right. There are obviously things that are off the record that I don't think the Jury should be entitled to hear. And if objections are sustained, those questions shouldn't be heard either, I agree with that.

THE COURT: All right.

MS. DANTOS: Judge, I'm making a Motion in Limine to keep the Transcript out.

THE COURT: Why? Isn't the Jury entitled to know all of this?

MS. DANTOS: No.

THE COURT: What did he do?

MS. DANTOS: No, they're not entitled to [37] know all that.

THE COURT: Well, you have some Law on that, not just Maria Dantos law, Law. Do you have any Law? I'm not quarreling with you. I don't agree with you. It seems to me – his responsibility is to show aggravating circumstances whatever they may be in accordance with whatever they are.

MS. DANTOS: And this aggravating circumstance –

THE COURT: And you have to show mitigating circumstances.

MS. DANTOS: Right and this aggravating circumstance that he's trying to show is that the Defendant has a significant history of prior convictions involving violence period.

MR. MOYER: Or threat of violence.

MS. DANTOS: Not that they're similar, not that – not that the facts are similar.

THE COURT: But he's not putting that on.

MS. DANTOS: Your Honor, he's going to read the –

THE COURT: It's not for that purpose, are you?

MS. DANTOS: He's going to read the entire Transcript.

[38] MR. MOYER: It's for the purpose that there was violence or threat of violence in the use of those –

THE COURT: Okay. Here –

MS. DANTOS: We'll stipulate that that's a crime of violence.

MR. MOYER: You're not going to be able to stipulate away my case.

THE COURT: No, I agree, no, no. I think they're entitled to put on what they're entitled to put on, and I don't see anything wrong with it. These are aggrava – this is a hell of a part of the Trial, I'll be quite frank with you. Oops, off the record.

(Whereupon proceedings are off the record)

(Whereupon proceedings are back on the record)

THE COURT: And I think they're entitled to hear the aggravating circumstances that are available. And if, indeed, those were the part of the aggravating circumstances of the Burglary, fine, we'll permit it, all right.

MR. MOYER: Thank you.

THE COURT: All right.

MR. MOYER: If you want to look at this, be [39] my guest.

THE COURT: Now, is that it then? All right.

(Whereupon conference in Chambers concludes)

[40] COURT CRIER: All rise please, Court is again in session, you may be seated.

MS. DANTOS: Your Honor, can we approach side-bar before the Jury's brought in?

THE COURT: All right.

(Whereupon Counsel approach side-bar)

MS. DANTOS: Judge, –

MR. MOYER: May the record reflect that I've handed a copy of the Indictment to Ms. Dantos as well as a Transcript of the Testimony of Joe Macrenna, I think is the way it's pronounced.

MS. DANTOS: Judge, for the record, I have been given a copy of the Indictment. I'd like to point out that it says, that did unlawfully enter a building 222 East Hamilton Street –

MR. MOYER: Well, read the whole thing please. It says, a building or occupied structure –

MS. DANTOS: Correct.

MR. MOYER: – or simply secured or occupied portion thereof.

MS. DANTOS: 222 East Hamilton Street which is the building. It does not specifically delineate the apartment that this woman lived in. I've had a chance to

[41] look over the – briefly, this Transcript. I don't think that this is going to go to the Burglary to show that the Burglary was violent. All it's going to do is point up one prior conviction for a Rape, that's not – that's not enough for this aggravating factor and if it comes back that the Burglary is not involved in violence, it's too late. They've already heard all this about the Rape. It's extremely prejudicial, and I – I'm objecting to it, to the whole Transcript being read in and to this aggravating factor, even the Jury being allowed to consider this.

THE COURT: Very well, and that's been argued, the Court's ruled it, denied. All right.

MR. MOYER: Can I have it back now?

MS. DANTOS: Well, I would like a copy of this.

MR. MOYER: I don't think that's my duty to provide you with a copy. That's a public record, and you could have gotten that Transcript at any time prior to this Trial. I made one copy for myself, and I'd like to have it now.

MS. DANTOS: Well, Judge, then I'm going to need to get a copy of it. I'm going to need to get a copy of it.

THE COURT: Well, it's going to be is read into the record, right?

[42] MR. MOYER: Correct.

THE COURT: Why would you need a copy?

MS. DANTOS: Because I would like to – as it's being read, I may have some objections to it, and I would like to get a copy so I can follow along.

THE COURT: Who's going to do the reading? How many copies do you have?

MR. MOYER: I just have the one copy I made for myself. I told Counsel, before this trial ever started, that it was my intent to have this Transcript read into the record.

MS. DANTOS: Well, Judge, –

MR. MOYER: What they did after that, you know, I'm not aware of.

MS. DANTOS: Judge, I was not aware that he was going to read the entire Transcript from her testimony.

MR. MOYER: Well, –

MS. DANTOS: How did I know which part of the Transcript he's going to read.

MR. MOYER: I told either you or Fred Charles that I was intending to do that.

THE COURT: This is a copy of the original?

MR. MOYER: Correct.

THE COURT: Where is the original?

MR. MOYER: Doris Glaessman has the [43] original.

THE COURT: Who does?

MR. MOYER: Doris Glaessman.

THE COURT: Is she going to use that for reading?

MR. MOYER: Correct. You know, I have no objection to the Defendant – Defense Attorney having a copy, of course, I don't have an objection to that but, you know, I don't understand why they didn't get a, you know, why they didn't make plans for that themselves before.

MS. DANTOS: Well, Judge, this will take five minutes to get a copy of it.

THE COURT: Well, now, she – are you going to have somebody responding with questions, and her answer, is that how you're going to handle this?

MR. MOYER: No, just – I'm going to have – in fact, I'm going to have Kelly Waldron, from our Office, reading the Transcript as it – exactly the way it is. If there are –

THE COURT: This one right here?

MR. MOYER: No, the original, she's going to be reading from the original.

THE COURT: Why can't you let her have this?

MR. MOYER: Because then I don't have one. [44] I guess the only thing to do is to have a copy made now, and we'll wait or we can put on the rest of testimony until it's time for that in the meantime.

THE COURT: Do you have something that you can put on?

MR. MOYER: I'll put on Doris to testify it's – that they are convictions, first of all, I have to do that, and I have Detective Beltz to testify to the same –

THE COURT: Okay, all right. Send it down, have a copy made, all right.

MR. MOYER: Well, why don't we have a copy of the original done.

MS. DANTOS: Fine.

THE COURT: Who has the original?

MR. MOYER: Doris Glaessman.

THE COURT: Well, I'm not sure she wants to give that up. I – do you have the original transcript.

MS. DANTOS: Page 77 through 149 is what we need.

THE COURT: Do you have the Pages? Can you – can we have copies made of whatever pages they're asking for?

MS. GLAESSMAN: Sure.

THE COURT: Send it down and then we can [45] have Mr. Moyer can put you on as a witness and develop what he wishes with you by way of – all right.

MR. MOYER: Now, are you going to give preliminary instructions to the Jury when they're brought in, again?

THE COURT: Well, I may repeat something but that's –

MR. MOYER: Are we going to give openings?

THE COURT: Yeah, if you want to?

MR. MOYER: Yeah, I do.

THE COURT: I would assume.

MS. DANTOS: I would request to defer mine till tomorrow.

THE COURT: All right, very good. All right.

(Whereupon side-bar conference concludes)

THE COURT: Well, we can have the – we can dispose of the openings and while she's having that at the Copy Room, all right?

MR. MOYER: Well, can we have somebody go down with the Transcript so that she can be here to testify.

THE COURT: All right, you may bring the [46] Jury in please.

(Whereupon the Jury enters the Courtroom)

MR. MOYER: Judge, do you want – can we approach?

THE COURT: All right.

(Whereupon Counsel approach side-bar)

MR. MOYER: Did you want a copy?

THE COURT: No, I can count on you people for that. I don't think I need to, all right.

MR. MOYER: Okay, then I'll get one copy.

(Whereupon side-bar conference concludes)

THE COURT: Now, ladies and gentlemen, as I indicated when we recessed, we are about to commence the Hearing, to take additional evidence and argument and thereby, you shall decide whether or not the Defendant is to

be sentenced to life or death, rather life imprisonment or death. Suffice it to say, that the burden, of course, remains with the Commonwealth to prove this Defendant the aggravating circumstances necessary for you to make the [47] determination as they may request, and they must do so beyond a reasonable doubt and that has been defined for you, and you may so consider it as such, as it was defined to you by the Court in its Charge in the initial – in the underlying trial. As I indicated, the burden remains with the Commonwealth throughout the course of this Hearing. The Defendant, of course, has a burden of proving any mitigating circumstances but only by a Preponderance of the Evidence. This is a lessor [sic] burden of proof than beyond a reasonable doubt. A Preponderance of the Evidence exists where one side is more believable than the other. In affect, [sic] and it is sometimes illustrated by using the normal balancing trays that you sometimes see where they have two pans on either side, and they lie of equal level and on one side, you put all the evidence established by one side or the other and on the other side, you put at the other end. If the scale tips ever so slightly in favor of the mitigating circumstance, that the burden rests with the Defendant then, of course, they have met that burden. That is a basic difference between that and beyond a reasonable doubt. There is a difference, and you should consider it as such as you go through the testimony that will be presented here. We will permit, at this juncture, the Defendant – rather the Commonwealth to make an opening remark as well as the Defendant if they so wish. Are you [48] prepared to proceed then, Mr. Moyer?

MR. MOYER: Yes, your Honor.

THE COURT: Very well.

MR. MOYER: May it please the Court, Counsel, ladies and gentlemen of the Jury, good afternoon. By your verdict, you had decided and rightfully so, that the Defendant is Guilty of Murder in the First Degree for the killing of James Scanlon in this case. As I told you on Voir Dire, it will be you 12 people that will decide the Sentence in this case and as you're well aware, there are two choices; there is life imprisonment and there's the death penalty. And as I told you on Voir Dire, the Commonwealth is seeking the Death Penalty. Nothing has changed since Voir Dire. It seems like a long time ago in many respects but nothing has changed since then. The Commonwealth is still urging you that that is the appropriate sentence in this case and now, is the time for us to put on further evidence that the Death Penalty is warranted. As I told you on Voir Dire, I mentioned to you two aggravating circumstances. That is, that the death was by means of torture and also that the death was committed during a commission of another felony and those felonies were Burglary and Robbery which you have also found the Defendant guilty of. Now, I am permitted to tell you that there is a third aggravating factor that the Commonwealth [49] is relying on. I was not permitted to tell you about that earlier, but I am now and that third aggravating factor is that the Defendant has a significant history of felony convictions which involve the use or the threat of violence to another person. So, there are actually three aggravating factors that the Commonwealth will be arguing to you are permissible in this case. At least one of those, we have to prove beyond a reasonable doubt, and we have to prove that it outweighs any mitigating factors that the Defendant may put on. We only have to prove one of those aggravating factors, one out of those three. Now, the first two aggravating factors that I had talked to you about are pretty self-evident from the

evidence. You know, and you have so found that the Defendant, during the course of the Burglary and the Robbery, killed Jimmy Scanlon. You also heard some of the testimony concerning some of the wounds that were inflicted upon Jimmy Scanlon. Dr. Mihalakis will also testify early this afternoon, hopefully this afternoon. If not this afternoon, tomorrow concerning the injuries that were suffered by Mr. Scanlon. The final aggravating circumstance involves a significant history of felony convictions. And in this case, we will show you two felony convictions. We will show you that the Defendant has been previously convicted of Rape and another crime of Burglary, another Burglary, and we will submit to you that [50] that presents a significant history of felony convictions. You will also hear testimony that there was violence and the threat of violence that was inflicted by the Defendant during those – during the commission of those felonies. After the Commonwealth has put on all its evidence concerning the Death Penalty, the Defendant has an opportunity to give you evidence concerning mitigating factors. When all of that is done and all of the evidence is before you, his Honor, will, again, instruct you on the Law for this phase of the Trial. Until then, I just ask you to keep the same attentive – attentiveness that you have throughout this whole Trial, thank you very much.

THE COURT: Miss Dantos?

MS. DANTOS: Your Honor, I will defer my opening till the beginning of our case.

THE COURT: Very good. All right, you may call your first witness.

MR. MOYER: Commonwealth calls Doris Glaessman to the stand.

DORIS GLAESSMAN, WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MOYER:

Q. Could you state your name for the Jury please?

[51] A. Doris Glaessman.

Q. By whom are you employed?

A. I'm the Elected Clerk of Courts for the County of Lehigh.

Q. How long have you been so employed?

A. I've been the Clerk of Courts since 1982.

Q. Could you tell the ladies and gentlemen of the Jury what your duties are?

A. The Office contains and handles the criminal and civil filings and cases coming into the Court of Common Pleas for the County of Lehigh.

Q. As part of your duties as the Clerk of Courts, are you the official custodian of all criminal records?

A. That's correct.

Q. Could you explain to the Jury what criminal records are maintained?

A. The original Magisterial Complaint and Transcript, the Information, the Pleadings, the Motions, Petitions, and Dispositions.

Q. Pursuant to my request, did you bring with you criminal records relating to the case of Commonwealth of

Pennsylvania vs. Ronald Rompilla, specifically Case Numbers 1487 and 1488 of 1974?

A. That's correct.

Q. And did – are those the documents there?

[52] A. Yes.

Q. Are those the full and complete records of those cases?

A. These are full and complete files as well as the copy of the – a certified copy of the docket records.

Q. Is there also a Transcript of that Trial?

A. There is a Transcript, Stenographic Transcript, of the Trial.

Q. Now, is – do you have that with you or is that somewhere else?

A. Right.

Q. Is that the Stenographic Transcript of the Trial involving Case Numbers 1487 and 1488 of '74?

A. That's correct.

Q. Now, did you also bring with you the docket entries concerning that – those cases?

A. That's right.

Q. And have you – strike that. Do those docket entries bear a certificate?

A. Yes, they are certified by a Deputy in my Office.

Q. And what are they certified as being?

A. They are certified as being a true and correct copy of the original on file.

MR. MOYER: Can we have them marked as Commonwealth's Exhibits – should we start over at 1, [53] again, your Honor?

THE COURT: Very well. Are those two separate –

MR. MOYER: Yes.

Q. I'm going to show you what's been marked Commonwealth's Exhibits 1 and 2. Are they the certified true and correct copies of the original docket entries in those two cases, Case Numbers 1487 and 1488 of 1974?

A. Yes, they are.

Q. And are those actually correct copies of the originals?

A. They are duplicated xerox copies, correct.

Q. Now, directing your attention to the docket entries concerning Case Number 1487 of 1974, was the Defendant convicted of a crime in that case?

A. Yes, there is an entry to that extent.

Q. And what was the Defendant convicted of?

A. The Defendant was convicted or found guilty of Rape in Case Number 1487 of 1974.

Q. What is the date of that conviction?

A. The date of the conviction was December the 13th, 1974.

Q. And was that pursuant to a Jury Trial?

A. That's correct. It was a Jury Verdict.

Q. Was the Defendant sentenced in that case?

[54] A. Yes, the Defendant was sentenced.

Q. By whom was he sentenced?

A. The Court, in Sentencing, was the Honorable John E. Backenstoe.

Q. And what is the date of the Sentence?

A. Date of Sentence was February the 2nd, 1976.

Q. Now, directing your attention to Case Number 1488 of 1974, was the Defendant convicted of a crime in that case?

A. The Defendant was found guilty to Burglary and Theft charges.

Q. And what is the date of that conviction?

A. The Jury returned the verdict on December the 13th, 1974.

Q. Was the Defendant sentenced?

A. Defendant was sentenced on February the 2nd, 1976 by the Honorable John E. Backenstoe.

MR. MOYER: I would ask for the admission of Commonwealth's Exhibits Number 1 and 2.

THE COURT: Any objection?

MS. DANTOS: No objection.

THE COURT: Very well, they're admitted.

MR. MOYER: That's all.

THE COURT: Any questions?

MS. DANTOS: I don't have any cross.

[55] THE COURT: Very good. Thank you very much Miss Glaessman.

MR. MOYER: Can we keep the Notes of Testimony of the Trial, your Honor?

THE COURT: I think it would be appropriate. We better, because we may have need of it. You may call your next witness?

MR. MOYER: Commonwealth calls James Beltz to the stand.

JAMES BELTZ, WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MOYER:

Q. Could you tell the ladies and gentlemen of the Jury your name please?

A. James Beltz.

Q. Are you employed, sir?

A. I'm retired.

THE COURT: How do you spell that last name, excuse me?

THE WITNESS: B-E-L-T-Z.

THE COURT: Thank you.

Q. Prior to your retirement, by whom were you employed?

[56] A. Police Department, City of Allentown.

Q. In what capacity?

A. I was a Lieutenant when I retired and before that, I was a Detective.

Q. For how long were you a police officer?

A. 41 years.

Q. 41 years?

A. Yes.

Q. Are you familiar with the Case, Commonwealth of Pennsylvania vs. Ronald Rompilla, Case Numbers 1487 and 1488?

THE COURT: Of 1974.

Q. Of 1974?

A. Yes.

Q. And you – did you hear the testimony of Doris Glaessman?

A. Yes.

Q. Who testified to the conviction concerning Rape and Burglary?

A. Yes.

Q. Were you the Prosecutor in that case?

A. I was.

Q. And by Prosecutor, you mean the officer that filed the charges?

A. I did.

[57] Q. You investigated the case –

A. Yes.

Q. – and you filed the charges? Ms. Glaessman has indicated that the Defendant, in that case, was a man by the name of Ronald Rompilla, is that correct?

A. That's correct.

Q. The Ronald Rompilla that was Defendant in those Cases, is he located in this Courtroom?

A. He is.

Q. Could you point him out for the Jury?

A. In the blue shirt sitting across from Attorney Charles.

MR. MOYER: May the record reflect that the Witness has identified this Defendant, in this Case, Ronald Rompilla.

THE COURT: As the Case in 1487 and 1488 of 1974?

THE WITNESS: Yes.

THE COURT: Very well. Let the record so reflect.

MR. MOYER: That's all, you can cross.

MS. DANTOS: No questions.

THE COURT: No questions. Thank you very much, Mr. Beltz.

MR. MOYER: Your Honor, may we approach the [58] bench? May we approach, your Honor?

THE COURT: Yeah, sure.

(Whereupon Counsel approach side-bar)

MR. MOYER: It is, at this time, that I would like to have the Transcript of the Victim in the Rape Case read.

MS. DANTOS: Your Honor, at this point, procedurally, I believe I could object every question.

THE COURT: We know you're – very good.

MS. DANTOS: But if you are telling me that my objections are going to be sustained, I mean overruled, and that the whole Transcript is going to be allowed to be read in, I just want my objection for the record to everything in the Transcript, to every question and every answer.

THE COURT: So noted, and we make the same ruling that we made before, all right.

MR. MOYER: There are very well – if I may be heard on this. I don't think that's sufficient. I think that if there are individual questions that have to be objected to, I think she's going to have to do that at the time those questions are asked. There are certain things that are on si – that are at side-bar, obviously, I [59] don't think the Jury should hear or is entitled to hear but if there is any objectionable questions that she's objecting to, she's got to interpose that objection either now or at the time the question is being read.

MS. DANTOS: Your Honor, I object to every question in here. I object to everything in here.

THE COURT: She don't have to object every time.

MR. MOYER: I can – no, I can say – I understand she can have a general objection to the fact that the Transcript, itself is being –

MS. DANTOS: No.

MR. MOYER But I'm talking about the individual questions. If she's going to object to every one, then she's going to have to object on it. If she doesn't object to it, then it's waived.

MS. DANTOS: Well, your Honor, that's why I'm telling you that I object to every question in here.

THE COURT: He says, –

MR. MOYER: Because there may be some objection –

THE COURT: – they're unrightful and that's what he said. But the point I'm making is, it's going to be – play havoc with your case if constantly –

MS. DANTOS: That's right.

[60] MR. MOYER: But there may be some objections – some questions that are properly objected to and properly sustained. She's got to – she's got to, you know, pay attention then, that's her job.

MR. CHARLES: Do I get to put my two sense [sic] in?

THE COURT: Pardon?

MR. CHARLES: May I say something?

MR. MOYER: Well, you know, I don't like, you know, fighting two – two battles, this is being ridiculous.

THE COURT: That's true.

MR. CHARLES: You know what this procedure is.

MS. DANTOS: Well, your Honor, I mean, I spoke at the side-bars on the last two.

THE COURT: Well, we do what the Rules are and one handles. One way or the other, I don't care who.

MR. CHARLES: Your Honor, may I have a minute to speak with her before she –

THE COURT: All right.

MS. DANTOS: Judge, you know, if I don't –

THE COURT: You're objecting –

MS. DANTOS: – if I only object to certain questions, I've already objected to everything in the [61] Transcript. I don't want to waive any objections.

MR. MOYER: Well, that covers you.

MS. DANTOS: I don't want to waive –

MR. MOYER: That covers you.

MS. DANTOS: – any objections to any questions.

THE COURT: Well, put your objection as you wish, whatever way you want to handle it, it's up to. You're objecting to the entire Transcript.

MS. DANTOS: And every question in there.

THE COURT: And we are denying the objection at this juncture, all right.

MR. CHARLES: Did you want her to object to each one as it's asked?

THE COURT: I'm not saying anything. I'm not controlling anybody's case here just as I don't control his.

MR. CHARLES: Fine.

THE COURT: It's up to you. All right.

(Whereupon side-bar conference concludes)

MR. MOYER: Your Honor, at this time, I would request that the Testimony of, I believe, is Josephine Macrenna be read into the record and read to the [62] Jury which is from the original Notes of Testimony that have been delivered by Doris Glaessman.

THE COURT: I'm not quite sure – Josephine Macrenna, I'm not familiar with the name.

MR. MOYER: She is the victim in the Rape case.

THE COURT: In 1487 of 1974?

MR. MOYER: That's correct, 1487.

THE COURT: Very well, are you going to call someone then to –

MR. MOYER: Yes, I will call Kelly Waldron from the District Attorney's office to read from the original.

KELLY WALDRON, WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MOYER:

Q. Ms. Waldron, if you could direct your attention to page 77 of the Transcript.

THE COURT: Well, can we have her identify herself on the record first with a full name?

MR. MOYER: Yes, your Honor.

THE COURT: All right.

Q. Could you state your name for the Jury please?

[63] A. Kelly Banach Waldron.

Q. By whom are you employed?

A. Office of the District Attorney, Lehigh County.

Q. In what capacity?

A. Assistant District Attorney.

Q. And how long have you been an Assistant District Attorney?

A. Approximately, a year and a half.

MR. MOYER: Any questions?

MS. DANTOS: No.

THE COURT: All right.

Q. Could I direct your attention to Page 77 of the Transcript please?

A. Yes.

Q. Do you have that in front of you?

A. I do.

THE COURT: Now, for the record, this is a Transcript that she's – will be reading from that was identified by Miss Glaessman as the official custodian, is that correct?

MR. MOYER: Yes.

THE COURT: And this is in Case, 1487 of 1974?

MR. MOYER: That's correct.

THE COURT: All right.

[64] Q. And Ms. Waldron, if you could begin reading from – about 1/3 of the way down where it says Josephine Macrenna was called as a witness and then read every question and answer with – and proceed the question with the word question and proceed the answer with the word answer.

A. Fine.

(Whereupon Transcript is read into the record)

Question by Mr. Brenner:

QUESTION: Josephine, what is your full name?

MS. DANTOS: Objection, objection, your Honor, same reasons.

THE COURT: Overruled, very good.

ANSWER: Josephine Macrenna.

QUESTION: And what is your address, Josephine?

MS. DANTOS: Objection.

THE COURT: Overruled.

ANSWER: 222 East Hamilton.

QUESTION: How old are you?

MS. DANTOS: Objection.

THE COURT: Overruled.

ANSWER: I'm 54, going to be 54 in January.

QUESTION: 54 years old and are you the owner of Joe's [65] Place?

MS. DANTOS: Objection.

THE COURT: Overruled.

ANSWER: Yes, I am.

QUESTION: Are you married?

MS. DANTOS: Objection.

THE COURT: Overruled.

ANSWER: No, I'm not, I'm widowed.

QUESTION: And when did your husband die?

MS. DANTOS: Objection.

MR. MOYER: Your Honor, I would ask that this not continue, because it's going to distract from the Jury listening to the Transcript.

MS. DANTOS: Your Honor, we can approach the bench.

THE COURT: Well, I don't control their trial of the case. I agree with you, Mr. Moyer, but you indicated

that unless they do object, they waive the objection. That's the difficulty. This is exactly what I've despaired occurring, but we will rule on each one if that's necessary then, all right. Overruled.

ANSWER: June 12th, 1964.

QUESTION: 1963. And directing your attention to Wednesday evening, January 24th, would you tell the ladies and gentlemen of the Jury where you were at that particular [66] evening?

MS. DANTOS: Objection.

THE COURT: Overruled.

ANSWER: Well, I had went up to the –

THEN BY THE COURT: Is it January 24th or July?

BY MR. BRENNER:

QUESTION: I'm sorry, July 24th?

MS. DANTOS: Objection.

THE COURT: Overruled.

ANSWER: July 24th. I went up to a Bingo Game at East Side Youth Center.

QUESTION: And who was with you at the Bingo?

MS. DANTOS: Objection.

THE COURT: Overruled.

ANSWER: My daughter, and we had ran into two friends, lady friends, of mine.

QUESTION: And who were they?

MS. DANTOS: Objection.

THE COURT: Overruled.

ANSWER: It was Esther Laubach and Lil, I don't know Lil's last name offhand.

QUESTION: Are Esther and Lil about your age?

MS. DANTOS: Objection.

THE COURT: I think we're [67] going to draw – withdraw. We're going to say that your general objection to all of the questions are preserved with respect to each and every question and that's what will the holding be. Otherwise, I agree, this gets a little –

MS. DANTOS: So, your Honor, no longer do I have to object to every question in here –

THE COURT: Not as far as I'm concerned.

MS. DANTOS: Thank you.

THE COURT: Very good. All right, let's let it flow, please.

ANSWER: No, they're in their 60's.

QUESTION: They're in their 60s?

ANSWER: Yes.

QUESTION: And what time was the Bingo Game over?

ANSWER: Approximately 10 after 11 or quarter after, somewhere in there.

QUESTION: And after the game was over, where did you go?

ANSWER: My daughter was also present, and she had dropped me off at the bar.

QUESTION: And what's your daughter's name?

ANSWER: Marianne Harkins.

QUESTION: Marianne Harkins. And what time did you [68] arrive at your establishment?

ANSWER: About 20 after 11.

QUESTION: And you say your daughter left you off and you and –

ANSWER: Yes, she had left me off in front of the place, and she had went home.

QUESTION: All right. Did you go into your place?

ANSWER: Yes, I did.

QUESTION: When you arrived there, were there other people in the place?

ANSWER: Yes.

QUESTION: What did you do?

ANSWER: I had sat down, and I told Jean to get me a drink of water.

QUESTION: And was anyone else with you at the time?

ANSWER: No, not at the time. I was up at the upper end by myself.

QUESTION: You say, the upper end, where do you mean by upper end?

ANSWER: At the east end of the bar.

QUESTION: On this side here (indicating)?

ANSWER: No, at the east end of the bar.

QUESTION: This side (indicating)?

ANSWER: No.

QUESTION: Here (indicating)?

[69] ANSWER: No, right there.

QUESTION: Right there (indicating)?

ANSWER: Yes, ah-huh.

QUESTION: And you were sitting here and how long did you sit there alone?

ANSWER: Oh, about 10 minutes I'd say.

QUESTION: And then what happened, Josephine?

ANSWER: And – well, Esther and Lil had come in. They surprised me by coming in after the Bingo Game which they hadn't said anything up at the Hall that they were coming down and when they came in, I had went over to where they had sat down and joined them in a drink.

QUESTION: And where had they sat down?

ANSWER: They sat down on the west door, on that side of the bar with the back to the west door.

QUESTION: Over here (indicating)?

ANSWER: No, th~~at's the~~ east door, there I mean (indicating). I'm sorry, the east door.

QUESTION: The east door over in this area here (indicating)?

ANSWER: Yes, that's where we had sat, right around the bend of the bar there.

QUESTION: If I – If I would put an X here, would that be the approximate location?

ANSWER: Yes, that's where we had sat.

[70] QUESTION: Were [sic] you and your lady friends sat that evening?

ANSWER: Yes, ah-huh.

QUESTION: And how long were you together there?

ANSWER: Oh, I'd say about 40 minutes.

QUESTION: Did you have a drink together?

ANSWER: Yes.

QUESTION: Did they have a drink also?

ANSWER: Yes.

QUESTION: And then, what did you do?

ANSWER: Well, Lil said she had wanted to go home, and they had broke about 25 after 12 – 25 after 12 that they had left and when they had left, I says, to Jean that I was going up. I had felt I could watch the rest of the TV Show up in my living room.

QUESTION: All right. And did you do that?

ANSWER: Yes, I did.

QUESTION: All right. Now, what time did you go upstairs?

ANSWER: Approximately 12:30.

QUESTION: And was there a sweeper kept in this kitchen (indicating)?

ANSWER: Well, the sweeper is in back of the door in the kitchen.

QUESTION: What, one of these swinging doors?

[71] ANSWER: Yeah, ah-huh.

QUESTION: And at the time that you went up where that – where was that sweeper?

ANSWER: I hadn't noticed it. I had seen that the sweeper was disturbed later.

QUESTION: When did you see the sweeper was disturbed?

ANSWER: When he had asked me to come back downstairs.

QUESTION: That's the Defendant?

ANSWER: When we went down for the money, yes.

QUESTION: Where did you see the sweeper at that time?

ANSWER: The sweeper was on the opposite side in the back of the door, the exact opposite door.

QUESTION: In other words, –

ANSWER: That he must –

MR. MOYER: Now, let me interrupt you there, Ms. Waldron, because that question is objected to, and I believe it was sustained by the Court. So if you could skip the objection and the sustained – the sustained by the Court and go to the next question.

BY MR. BRENNER:

QUESTION: Had the sweeper been moved?

ANSWER: Yes, when I seen it the next time, it was on the opposite side, in behind the opposite door.

QUESTION: All right. Now, when you went up, which [72] door did you go up?

ANSWER: Up the upstairs.

QUESTION: This door here (indicating)?

ANSWER: Yes, ah-huh.

QUESTION: And did you lock that door?

ANSWER: I always lock it.

QUESTION: Did you lock it that evening?

ANSWER: Yes, it's an old type of thing you just lock. It's an odd type of thing you just lock.

QUESTION: Now, this would be then when you went upstairs, July 25th, 1974?

ANSWER: Yes, the early morning.

QUESTION: All right. Now, when you went upstairs, where did you go?

ANSWER: I went into the front room, I had changed. I had taken my top dress off, and I had put a gown type of dress on.

QUESTION: And what did you do – and what did you then do, Josephine?

ANSWER: I went in the front room, and I had put the rest of the Dick Cavett Show on, the Guiness Book of Records.

QUESTION: Is this a living area?

ANSWER: Yes, it's my front room. That's an apartment above the Bar.

[73] QUESTION: Was there a couch there?

ANSWER: Yes, on the east wall.

QUESTION: And did you put the television on?

ANSWER: Yes, I did.

QUESTION: And what show did you put on?

ANSWER: I watched that Dick Cavett, the rest of it because we were watching it downstairs before I come up.

QUESTION: Was that the same show that was on downstairs before you came up?

ANSWER: Yes, ah-huh.

QUESTION: You put on upstairs. Was there a pillow on the couch?

ANSWER: Yes, I was resting on a pillow watching this.

QUESTION: Did you see the entire end of Dick Cavett?

ANSWER: Yes, I did.

QUESTION: And what time did the Dick Cavett Show end?

ANSWER: At 1:00 o'clock in the morning.

QUESTION: At 1:00, what happened then, Josephine?

ANSWER: I dozed off.

QUESTION: Right on the couch?

ANSWER: Yes, I had fallen asleep there.

QUESTION: Had you turn [sic] the television off?

ANSWER: No, I had fallen asleep with the TV on.

QUESTION: Were there lights on, also, at this time?

[74] ANSWER: No, just the hall light that leads up to the stairway. I had left that on.

QUESTION: You left that one on?

ANSWER: Yes, and I had also closed the door, because I had intention of going back down later.

QUESTION: What door did you close?

ANSWER: The top door, I put the double latch on it.

QUESTION: Was there a door at the top of the stairs?

ANSWER: Yes, ah-huh, that's the door that leads –

QUESTION: Leading into your –

ANSWER: Immediately into my apartment. You step into the hallway and then right across would be my front room.

QUESTION: How did you lock that door?

ANSWER: With the chain lock. You just push it shut and put the bolt on it.

QUESTION: All right. Now, would you tell the ladies and gentlemen of the Jury, I believe you said you watched the Dick Cavett show to its end at 1:00 o'clock?

ANSWER: Yes.

QUESTION: And then what happened?

ANSWER: Well, I don't know long I had slept – I don't know how long I had slept, but I had heard this noise, and it sounded like a screen could have fallen, and my storm windows don't fit exactly the way they should. [75] When they installed them, they weren't quite uniform, and I had sort of felt that the screen had fallen – one of the screens had fallen in. It sounded like it had fallen into the room, and I picked my head up to see what the noise was, and I seen a man walking towards me, and he says, "face down on the pillow, I have a gun on you."

QUESTION: Can you identify that man?

ANSWER: Yes, I could now.

QUESTION: Who came in. Would you point to him?

ANSWER: That gentleman there (indicating).

BY MR. BRENNER: Let the record show that the Witness pointed to the Defendant, Ronald Rompilla.

BY MR. BRENNER:

QUESTION: Now, exactly, what happened?

ANSWER: Well, I had wondered, you know, just – this was strange, and I said, "who are you and how did you get in?" And he says, –

QUESTION: Had you been sleeping?

ANSWER: Yes, well, that's what woke me up. I came out of my sleep, and I had my face down on the pillow. He had told me he had a gun on me, and I put my face dawn like he had ordered me to. Then he came over to me, and he sat on the very end of the couch, and he put his arm across my back and that's when he se – that's when he went, "do you [76] know," he says to me sitting there, he says, "I hear you have a lot of money, a lot, a lot of money." And I picked my head up to say, "you're wrong." When he had pushed it back into the pillow. Then with that, he had grabbed me by the back of the hair, and he had pulled by [sic] head up. He says, "where do you have it?" And I said, "the only money I have is downstairs in the register." And then he says to me, "what time does she close?" That's the first time I realized that there was someone downstairs, and I says, "2:00 o'clock," and he had looked at his wristwatch, and he had said, "it's 10 of 2 now." And with that, he made me get up, and he had went through the apartment opening drawers, and he had pulled everything out of the desk drawers – the drawers, my drawers in the back – in the bathroom. He just went through the apartment looking for this money. Then he went into the front room

and that's when he had called the bar to find out if she had left yet which Jean had answered.

QUESTION: How do you know he called the bar?

ANSWER: I was there. He had me go with him, and he had used the phone in the front room and then when Jean answered, he hung up.

QUESTION: Was there a telephone book there?

ANSWER: No.

QUESTION: How did he know the phone number?

[77] ANSWER: He had asked me what the number was.

QUESTION: He asked you. Was there two separate numbers, one for your living area and one for the bar down below?

ANSWER: Yes, my number's unlisted upstairs.

QUESTION: It's an unlisted number upstairs?

ANSWER: Yes.

QUESTION: Did he then dial the Bar number?

ANSWER: Yes, he had asked for the number, and he had dialed which I was hoping she wouldn't have been there, you know. So, with that he had asked –

QUESTION: Could you hear whether anybody did answer downstairs?

ANSWER: No, he had waited and then he hung up.

QUESTION: He hung up?

ANSWER: He hung up. So, evidently, she had answered.

QUESTION: And then what happened?

ANSWER: Then he had asked me if she comes up with the money. I says, "no, she lets it down at the foot of the stairs." And then he says, "which way does she go out?" I said, "she goes out the back door." So, he had made me go back to the room that overlooks the porch, and you could look out the porch window. You could see out the second floor window, and you could see someone leave.

[78] QUESTION: Where would that be located?

ANSWER: That would be right over that one section of the dining room.

QUESTION: Over here (indicating)?

ANSWER: No, that side there overlooking the porch, there (indicating).

QUESTION: This area here (indicating)?

ANSWER: Yeah.

QUESTION: All right. Then what happened?

ANSWER: Well, then she had left. She had left with two other customers.

QUESTION: How do you know that she had left?

ANSWER: Well, we had seen her go.

QUESTION: And where was he at this time?

ANSWER: He was standing with me along side of me looking out the window.

QUESTION: And were you able to look out the window?

ANSWER: Yes, I seen Jean leave with Marvin and Larry.

QUESTION: All right. Then what happened, Josephine?

ANSWER: Well, then when we had seen her leave, I had says to him, he could go down for the money which he did. Then, when I had gotten downstairs, I wanted to go in that dining room area where we had kept the night light on, but he had insisted on going on the other side, the other [79] double half of that section. It was darker there. So, I had taken the bills out, and he had grabbed the bills and put them in his pocket. Then he says to me, "back in the kitchen."

QUESTION: Do you know how much money he took?

ANSWER: Yes, well, there's $108.00 missing.

QUESTION: Was that your money?

ANSWER: Yes, that was the receipts on the night key.

QUESTION: On the night key?

ANSWER: Yes, ah-huh.

QUESTION: And you actually saw a role [sic] of bills there?

ANSWER: Yes.

ANSWER: And what did he do with the money?

BY THE COURT: Just a second. When you say, "night key," what do you mean?

BY THE WITNESS: Well, when we have – your Honor, when we set up the help.

BY THE COURT: You can talk to the Jury.

BY THE WITNESS: We give them so much money to work with for change and stuff and that was the receipts for the day with the monies that were in the bag and the money that Jean had rung up. Why, that's what was missing.

[80] BY MR. BRENNER:

QUESTION: How much was that?

ANSWER: $108.00 was missing altogether.

QUESTION: All right.

ANSWER: But –

QUESTION: Did you see him with the role [sic] of bills in his hand?

ANSWER: Yes, when I pulled it out of the money bag, he had reached for it, and he had torn the top bill which was a 20, that was torn in half.

QUESTION: And what did he do with that?

ANSWER: He put it in his pocket, and he says, I should go back into the kitchen.

QUESTION: Did you do that?

ANSWER: Yes, I went back to the kitchen with him.

QUESTION: And what did you observe when you got into the kitchen?

ANSWER: At the time, I just went in. He was interested in opening the two big drawers by the sink and the smaller drawer that was over in the other side next to the slicer. It's a work table with a drawer in, and he didn't ask me to open the first drawer as we came in. He overlooked that drawer, because he must have got the spatula from that one.

QUESTION: You talk about a spatula, did you see a [81] spatula?

ANSWER: Yes, when we came down the steps, I had seen that there was a spatula on the third step.

QUESTION: On the third step?

ANSWER: Yes.

QUESTION: And that would be inside?

ANSWER: Inside the stairway.

QUESTION: Inside this door here (indicating)?

ANSWER: Yes, ah-huh.

QUESTION: On the stairway?

ANSWER: Yes.

QUESTION: And was the spatula kept in the first drawer in the kitchen?

ANSWER: Yes, all my kitchen utensils are kept in that first drawer.

QUESTION: He didn't ask you to open that drawer?

ANSWER: No, he didn't ask me to open that drawer.

QUESTION: But he opened all the other drawers?

ANSWER: Yes, the other on the far side of the kitchen. I have two, big, deep drawers at the sink and one at the slicer inside of a working table.

QUESTION: And did you observe the sweeper in this room?

ANSWER: When I came back, I had wondered – you could see, you approach up towards the way you go out of [82] the kitchen. I seen that the door on the opposite side where I usually kept my slee – sweeper, was slightly ajar, and I had noticed that my sweeper was moved from the one corner to the opposite side in back of the other door which I never kept it there because there's more room on the other side of the door. You know, it's more or less of a corner where you could –

QUESTION: All right. The Defendant had the money now in his pocket. What happened then?

ANSWER: Well, he says to me, "back upstairs," and I says to him, I said, "you got the money, why don't you run, why don't you go?" And he says, "upstairs," and I had sort of felt that all he wanted to do is – maybe he missed some the first time, that he just wanted to look around the second time. So, I get up to the top of the stairway –

MR. MOYER: Let me interrupt you there, Ms. Waldron, because I believe there's an objection and there's a discussion off the record until Page 92, approximately, halfway through the page where it begins, by Mr. Brenner.

BY MR. BRENNER:

QUESTION: All right. Josephine, you were downstairs and then what did he say to you?

ANSWER: To go back upstairs.

QUESTION: And what did you say?

[83] ANSWER: I had said, "you had gotten the money, go." I had felt that that's all he came for.

QUESTION: And what did he say?

ANSWER: Back upstairs, I had to go back upstairs.

QUESTION: And what happened then, Josephine?

ANSWER: And I got on top of the steps, he says, "take that room there" and to the left of it was my bedroom, and I had went in, and he stood in back of me, and he says, "take off your gown," he says, "I'm going to wrap you up with it and put your pants in your mouth." So, I – well, I stood petrified, and I didn't do anything. Then he come in front of me. That's when I seen he had the knife, and he was exposed.

QUESTION: All right. Just take it easy Josephine. Was this room lit?

ANSWER: No, just from the hallway, the light from the hallway.

QUESTION: There was a light on in the hall?

ANSWER: Yes, because by that time, he had knocked the door off.

QUESTION: Where the stairs were going up, this was lit and this then shown into the room?

ANSWER: Yes, into the bedroom.

QUESTION: Where you were. And you stood there, and you had this gown on I take it?

[84] ANSWER: Yes, ah-huh.

QUESTION: And you said something about a knife. Did he have a knife?

ANSWER: When he came in front of me, I seen he was exposed. He had is [sic] penis out, and he was holding a knife.

QUESTION: In what hand, do you remember what hand?

ANSWER: In the right hand.

QUESTION: And what did you then do, Josephine?

ANSWER: Well, when he said, "take your gown off," I took it off.

QUESTION: What were you wearing at that time?

ANSWER: I was wearing a green type of gown, sleeveless.

QUESTION: Did you have anything underneath?

ANSWER: Yes, I had my bra and panties on. I don't like to completely undress, because I often figure that maybe they'll need me downstairs that I could – just a matter of – just taking the gown off and putting another dress on, and I'd be ready to go down.

QUESTION: All right. Now, what happened then, how close was he to you at this point?

ANSWER: In front of me, in front of me with a knife.

QUESTION: Did he have his clothes on at this time?

ANSWER: Yes, he was dressed.

[85] QUESTION: But his penis was out?

ANSWER: Yes.

QUESTION: Was it erect do you recall?

ANSWER: No, not at that time.

QUESTION: Not at that time?

ANSWER: No.

QUESTION: Now, what did he say to you?

ANSWER: Well, he had asked me to take the gown off which I did then he says, "take your bra off" which I did. Then he says, "take your pants off." Then I had begged him not to do it to me, you know, and when I wouldn't take the pants off, he took the knife, and he had cut me.

QUESTION: Where did he cut you Josephine?

ANSWER: On the left bust.

MR. MOYER: Okay. Now, there's a discussion off the record there which I believe continues for a number of pages until Page 97, and we'll pick up by Mr. Brenner for purposes of identification.

BY MR. BRENNER: For the purposes of identification, I would ask that this be marked as Commonwealth's Exhibit Number 1. For the record, Commonwealth's Exhibit Number 1 was marked for identification.

BY MR. BRENNER:

QUESTION: Josephine, before I show you the Commonwealth's [86] Exhibit Number 1, as you went down from your room to the Bar, before coming up again, did you examine your door to your living quarters?

ANSWER: Yes.

QUESTION: Could you observe it?

ANSWER: I had seen that the first time he went through, the li – I had seen that the first time he went through the living quarters.

QUESTION: And what did you observe?

ANSWER: It was busted.

QUESTION: It was broken in?

ANSWER: Yes.

QUESTION: What about the latch that was –

ANSWER: The jam was split right in half and broken open and the door was swung right open.

QUESTION: All right. And you observed that. Now, you went downstairs and what happened, happened as you testified to and then you came upstairs again?

ANSWER: Yes.

QUESTION: Then you were in the bedroom?

ANSWER: Yes.

QUESTION: Now, I believe you indicated to the Jury that at this point, when you still had your panties on, the Defendant took his knife and slashed you across the breast, is that correct?

[87] ANSWER: Yes.

QUESTION: I show you what's been marked for identification as Commonwealth's Exhibit Number 1, can you identify that please?

ANSWER: Yes, that's where I was cut.

QUESTION: Is that you in the picture?

ANSWER: The next day, yes.

QUESTION: And that would the [sic] be –

ANSWER: That would be the morning.

QUESTION: The 25th?

ANSWER: The 25th.

QUESTION: And where was that picture taken?

ANSWER: In my kitchen.

QUESTION: And who took the picture, a police photographer?

ANSWER: Yes.

QUESTION: And does this picture accurately portray and depict the wound that you received from the Defendant?

ANSWER: Yeah, he cut me down and then across.

QUESTION: And is that the same wound that you received from this knife from the Defendant?

ANSWER: Yes, it is.

QUESTION: And is that an accurate and clear depiction and representation of that wound?

ANSWER: Yes, it is.

[88] QUESTION: Now, after Mr. Rompilla slashed you with a knife, what happened next?

ANSWER: Well, I had taken my pants off. He said I should get in bed, and I guess I wasn't spread the right way for him, because he gave me –

QUESTION: Let me ask you this. Did he have his clothes on at this time?

ANSWER: Yes, he kept his clothes on.

QUESTION: But his penis – what – but was his penis again exposed?

ANSWER: Yes, it was.

QUESTION: All right. Now, what did you do?

ANSWER: I got into bed like he had told me to get into bed.

QUESTION: Where was the knife at this time?

ANSWER: It was in his right hand.

QUESTION: And then what did he do?

ANSWER: I guess I wasn't spread right, because he had taken the point, and he had stuck me in the leg with it with the point of the knife to spread open more.

QUESTION: And what did you do?

ANSWER: I did.

QUESTION: And then, Josephine, what happened?

ANSWER: Well, he had gotten on top of me and with the knife in his right hand, he looked down at my face, and [89] he says, "you make one noise, and I'll pin you to the bed" and then he proceeded to do the sex act.

QUESTION: Did you have sexual intercourse with him?

ANSWER: Yes.

QUESTION: Was there penetration?

ANSWER: Yes.

QUESTION: Was there a completion of the sexual act?

ANSWER: Yes.

QUESTION: Was there semen put in your vagina?

ANSWER: I couldn't say, just that I had laid there, and I know he had laid on me, took a rest, laid on me, took another rest. It was eternal. All I could hear is my heart beating in my ears.

QUESTION: And do you know how long this went on Josephine?

ANSWER: Well, I'd say approximately an hour, an hour and 20 minutes that he had me in bed.

QUESTION: And where was the knife during this time?

ANSWER: In his right hand right along side of him.

QUESTION: Could you smell any alcohol on his breath?

ANSWER: Well, not to a point that it was prominent.

QUESTION: And what happened then, Josephine, how many times did you have sexual intercourse with him?

ANSWER: Well, I don't know if you'd call it one long time or whether you'd count it in 2's or 3's. I'd say [90] about three times that he could have.

QUESTION: And on each of those occasions, was there penetration?

ANSWER: Yes.

QUESTION: With his penis?

ANSWER: Yes.

QUESTION: Into your vagina?

ANSWER: Yes.

QUESTION: And you say this went on for about an hour and –

ANSWER: An hour and 20 minutes.

QUESTION: What happened then?

ANSWER: Well, I felt I was gonna have a coronary. I could feel my heart beating in my ears, and I pushed at him to get off which he did. He got off, and he got to the side of the bed, and he stayed there, and he says, "now, you're going to suck me off."

QUESTION: And what happened?

ANSWER: Then with that, I just slid off the end of the bed, put my gown on. I started to walk out of the bedroom. I got to the second step when he caught up with

me, and he grabbed my arm, and I pulled it back. He says, "you move when I tell you to move."

QUESTION: Where was the knife at this time?

ANSWER: He had it in his hand.

[91] QUESTION: All right. What happened then, Josephine?

ANSWER: Then I looked at him. I said, "I'm going down for a drink whether you like it or not."

QUESTION: Had you had it at this point?

ANSWER: Yes, I just couldn't go no more. I felt he was going to kill me anyhow.

MR. MOYER: All right. Why don't we stop there because there's an objection to the next question which is sustained by the Court and pick up where it's by Mr. Brenner.

BY MR. BRENNER:

QUESTION: What happened then, Josephine?

ANSWER: Then I went down into the bar area, and I'm in there making a drink for myself when he had come into the bar area, and he gave me a push. He said, "I told you not to move unless I tell you to move." Then I looked at him, I said, "do you want a drink?" He said, "get me a gin and tonic," that's what he say he wanted and with that, I went over, and I sat in the dining area at a table, and he came into the dining area, sat opposite across from me. That's when I noticed he had picked up – picked the towel up. Inside the bar area, there's linens, that's when I noticed that he had a towel along with the knife when he

sat at the table with me. So, I looked over at him, and I started to talk to him. I said, "where did you hear about [92] me." He said, "from friends of yours," and I said, "where did you get the idea I had so much money?" And then he mentioned that he had heard about it from friends, I was a rich widow. So, then we got talking, and I asked him what he did? He told me he was a knitter. He worked for a knitting company here in town and about his – then he told me he had a family. He has no furniture, they're really bad off, there was no furniture, that there is nothing, they're going hungry. And then I told him, I says, to assure him, I says, "I'm not gonna call the law."

QUESTION: Why did you say that?

ANSWER: Well, I sort of felt that maybe he'd leave, and I had said to him that I was in business for 27 years, and I wouldn't want my friends to know that this had happened to me, and I had sort of thought maybe I could – well, maybe by chance, he'd leave me alone. Then he jumped up. He says, "back upstairs," and I says, "I'm going for another drink" and with that, I had finished the drink I had made previously, and I went back to the bar.

QUESTION: Did he, at any time, give you a name?

ANSWER: Yes, he had told me that I could call the police if I wanted to, that his name was Richard Rutman, and I should call the police," I said, "no." I said, "I'm not gonna call the police."

QUESTION: Now, you were sitting at this table?

[93] ANSWER: In the dining area.

QUESTION: About how long did you sit having a conversation with him?

ANSWER: Oh, I'd say maybe about half an – a half hour that we sat.

QUESTION: And were there lights on downstairs?

ANSWER: Yes, in the dining area. There's a light on in that section.

QUESTION: Is there any question in your mind that it was this Defendant, here, who committed this crime?

MR. MOYER: All right. There's an objection then, and I believe there's an objection that's overruled and if you could pick it up by Mr. Brenner.

BY MR. BRENNER:

QUESTION: Absolutely certain?

ANSWER: Absolutely sure.

QUESTION: And you were in his company actually about how long?

ANSWER: About a half hour I'd say.

QUESTION: Downstairs?

ANSWER: Yes.

QUESTION: And upstairs?

ANSWER: We talked. He said he has a brother that was a – worked in a paint mill, he worked in a paint [94] factory, and he told me a little about, I guess, his family. He said he lived up in the Acres at one time, up on the hill, that you could see from the bar area through the front window.

QUESTION: And you were in his company from the very beginning until the time he left about how long?

ANSWER: Well, I'd say about another 15 minutes, I'd say about 45 minutes.

QUESTION: And he had arrived up there at what, about 2:00 o'clock?

ANSWER: 10 of 2.

QUESTION: 10 of 2?

ANSWER: When he had told me the time himself.

QUESTION: And he left about what time?

ANSWER: About approaching 5:00 o'clock, I'd say about quarter of.

QUESTION: Quarter of 5?

ANSWER: Yes, somewhere in there.

QUESTION: All right. Did you have any other conversation with him before he left?

ANSWER: Well, yeah, I told him, you know, that I worked. I work hard, and I'm happy in what I do.

MR. MOYER: All right. Now, there's an objection there which is overruled by the Court and if you could pick up at the bottom of the page where it [95] says by the witness.

BY THE WITNESS: I had told him that I'm happy as far as working goes, and he had gotten up and then he had given me 32, $1.00 bills back and a torn 20, the 20 he had ripped, and I had told him that I'd like to get to bed, because it was a matter of getting up in the morning. My

day man was on vacation, and I had to open the bar at 8:00 o'clock in the morning and then he had decided to go.

BY MR. BRENNER:

QUESTION: All right. Now, did he say anything in reference to a radio?

ANSWER: Yeah, well, he had told me about – I had said I wasn't going to call the law, that I wouldn't want it to be known that this had happened to me, and he said that he has a citizens band, and he'll find out. If there was any call for 222 East Hamilton, he was coming back for me, and I was petrified. I said, "no, I won't call the law," I said, "you didn't hurt me, you know."

QUESTION: And you wanted him to leave?

ANSWER: I wanted him to leave, yes.

QUESTION: All right. Did he then leave?

ANSWER: Well, he asked to call a cab for him. I had lost my glasses somewhere upstairs, and I couldn't see. I can't see without the glasses, but he had dialed, [96] but he had me do the talking. He said he was going to 19th and Highland and that's the address I had given the cab company. And then with that, I had walked to the front of the bar, and I had thrown the front door open, and I had put a wedge in. But he made me sit inside at the bar, right there at the doorway as you come in and then he sat on the ledge on the pavement side of the bar and that's when I had a chance to really observe his clothes, and I took a real good look at this man.

QUESTION: And what type of clothes did he have on?

ANSWER: He had a white pair of trousers with the red and black type of a plaid but not a solid black plaid, and he had brown shoes with a sort of an alligator style tip front and the shoe had a heal [sic], and he had a navy blue over slip type of brush rayon shirt that [sic] no button down shirt, no sport shirt, it was just an over type shirt.

QUESTION: And did he then leave?

ANSWER: Well, he waited till the cab came and then he had left but before he left, he came over to me, and he kissed me on the cheek, and he said, "I'll see you tomorrow honey" and that's when he had gotten into the cab.

QUESTION: And what happened then?

ANSWER: Well, I went back into the bar, and I pulled the door shut and I sat there, and I just sat there terrified. I couldn't believe that this had happened to [97] me. So, I must have sat there from approximately 5:00 o'clock until 8:00 o'clock.

QUESTION: Just by yourself?

ANSWER: By myself.

QUESTION: And did Mr. Shreibech come in eventually?

ANSWER: Ronnie came in about 10:00 o'clock.

QUESTION: And who is Mr. Shreibech?

ANSWER: He's an Allentown Policeman that helps me at the Bar.

QUESTION: And did you then relate to him the incident?

ANSWER: Yeah, I waited till Ronnie came, because I didn't want him to hear about it for fear that he'd come back after me before they had a chance to pick him up. So, I told Ronnie to run in town for him.

QUESTION: And did you relate it to Mr. Shreibech?

ANSWER: Well, yes, I told him that I was robbed, and I was cut, and I was raped, and I had showed him. That's when he had – well, I had showed him what happened. Then he went in for help.

QUESTION: All right. Did the Prosecutor, Mr. Beltz, then subsequently arrive?

ANSWER: Yes, he had gotten there about –

QUESTION: And did he go through the premises?

ANSWER: Yes.

[98] QUESTION: And did he observe your room upstairs?

ANSWER: Yes, he did.

QUESTION: And what was the condition of the room at the time he was –

ANSWER: Everything was thrown around. He had pulled everything out.

QUESTION: I have just one other question. Did you at any time consent to the sexual relations with the Defendant?

ANSWER: No, I didn't.

BY MR. BRENNER: No further questions.

MR. MOYER: All right, you may end there. May we approach, your Honor?

(Whereupon reading of Transcript concludes)

(Whereupon Counsel approach side-bar)

MR. MOYER: That's the extent of the Transcript, of this Witness, but I would like the Transcript of the – another Witness read in just so the Jury understands that it was, in fact, a barroom that was the scene of this crime and that is the witness of the bartender, Jean Ervin, I think her name is.

[99] MS. DANTOS: Judge, I would object. This certainly – the evidence that he's saying that it was a barroom, that's come out through that direct testimony that was just read, it just came out.

THE COURT: Isn't it duplication?

MR. MOYER: Pardon me?

THE COURT: Isn't it duplication?

MR. MOYER: Well, I suppose it is.

THE COURT: Sustained.

MS. DANTOS: Okay. Your Honor, for the record, since the Transcript has now been read in and line with my other objections, I'm asking that the Jury be directed to return a verdict of life.

THE COURT: Denied.

MR. MOYER: I think Dr. Mihalakis is here. So, if we could take a break so that I can, you know, just tell him a few things. He's not going to be that long, but I will

need the diagrams of the body, again. They might be in the Jury Room.

THE COURT: I don't know where they are. I guess they're there.

MR. MOYER: Yeah, I think so.

THE COURT: All right.

(Whereupon side-bar conference concludes)

[100] THE COURT: All right, Mr. Schaeffer, we're going to take a – make it a 15 minute recess, all right.

COURT CRIER: All rise please, this Court will be in recess for 15 minutes.

(Whereupon Court is in recess)

COURT CRIER: All rise, please, this Court is again in session, you may be seated.

THE COURT: All right. You may bring the Jury in please.

(Whereupon the Jury enters the Courtroom)

THE COURT: All right, Mr. Moyer, you may call your next witness please.

MR. MOYER: Commonwealth recalls Dr. Mihalakis.

ISIDORE MIHALAKIS, WITNESS

DIRECT EXAMINATION

THE COURT: And Doctor, again, I guess I have to remind you, you are still under oath from the –

THE WITNESS: Yes, sir.

[101] THE COURT: Very good.

BY MR. MOYER:

Q. For purposes of this hearing, you're actually being recalled from your testimony you gave in the trial, all right?

A. Yes, sir.

Q. Dr. Mihalakis, can you tell the Jury the difference between a person being alive and a person being conscious?

A. Alive refers to the beating of the heart, the having of blood pressure, the having the breathing, the having vital signs, these are indicators of life, blood pressure, pulse, respiration. Now, being conscious is being able to appreciate your surroundings. I can see you, you see me. As someone touches me, I feel someone touch me. If someone speaks to me, I can hear them. In other words, my five senses told me what is happening in the surroundings.

Q. Now, I think you've told us before which wounds the decedent, James Scanlon was alive for. Could you go through that again for the Jury for this proceeding?

A. Mr. Scanlon was alive for essentially all the wounds primarily, because we found hemorrhage through a greater or lessor degree.

Q. And when you say "hemorrhage", you're talking about bleeding?

[102] A. Yeah, we – in other words, we found bleeding in the soft tissues adjacent to the wounds. So, in order to have hemorrhage, one has to have circulating blood. So, if a vessel is severed, cut, damaged, then it leaks out, it leaks blood from within the lumina of the vessel. This causes hemorrhage and this is an indication that the heart is beating and the vascular system is functioning. So, we know we have life. Says nothing about consciousness, merely, that there is life present.

Q. And I think you testified that for all the stab wounds, all the abrasions, all the lacerations, all the blunt force injuries, fracture of the nose, Jimmy Scanlon was, indeed, alive, is that correct?

A. That's correct.

Q. And it is only for the Second and Third Degree Burns that there – there's no evidence that he was alive, is that correct?

A. That's correct.

Q. And that is because there was no smoke found in the lungs?

A. No smoke was found in the lungs, no carbon monoxide, nothing to indicate that he was breathing in any way.

Q. Now, can you determine whether a decedent is conscious for certain wounds?

[103] A. Yes, you can.

Q. And could you tell the Jury how you can determine whether a decedent is conscious for certain wounds?

A. You can tell by the fact that they are defense wounds. Defending oneself is a conscious phenomenon where one will raise his hands. When one is unconscious, vision is impaired, feeling is impaired, the vital functions, some of the vital functions, the five senses, are impaired to – to a variable degree. You know, you have people coming out of the operating room, and they have a feeling of pain as they're coming out of the anesthesia So, there are degrees of unconsciousness but, by and large, if there is an indication of a deliberate act, such as defending oneself, this is an indication that the person is conscious and obviously, if he's conscious, he has to be alive.

Q. All right. And those would be the wounds that you've described around the hand area, is that correct?

A. That's correct. The –

Q. There are stab wounds on the hand, lacerations on the hand, and blunt force injuries on the hands?

A. That's correct.

Q. Now, other then defensive wounds is there any other way to determine whether or not wounds were inflicted while the decedent was conscious?

A. The only way you can tell if is you have eye [104] witnesses or something, you know, just by looking at a deceased individual other than those indicia that we spoke of, there really is no other way.

Q. Medically, there is no way of knowing that whether these wounds were inflicted while – any of these wounds were inflicted while the decedent was conscious, is that correct?

A. That's correct, with beyond reasonable doubt, no it cannot be.

Q. So, you're not saying that they were not – they were inflicted when he was conscious, and you're not saying they were inflicted when he wasn't conscious. You cannot tell one way or the other?

A. That's correct. We know at some point he had to have lost consciousness, he's found on the floor. We know that there's bruising of the back of the head which translates into bruising of the brain. That's commonly associated with loss of consciousness, we know that there is loss of blood.

Q. Can we assume, however, that at least one, at the very least, at least one of these wounds was the first wound other than the defensive wounds?

A. I – I believe you, yes you can infer that but at the same time, we don't [sic] whether the blunt force injury came first of the back of the head. So, –

[105] Q. Correct. Let's assume that that blunt force injury did come first, can we medically determine whether or not he was conscious for that? Isn't it true that to a reasonable degree of medical certainty, you can determine whether or not he was conscious for that?

A. Well, we have him conscious for the defensive wounds, okay, now, we'll just see the body with that [sic] any of the other wounds, okay. Certainly, the abrasions of the face, are non-lethal, and we have two options. If they are not lethal, okay, then either they were inflicted strictly for the sake of causing pain or he is alive. The alternative is, that someone just deliberately, as an unconscious individual wants to see if he's alive, and it's just your and

[sic] brandishes a broken bottle which is unlikely. So, either he's alive and feeling pain or it is a deliberate attempt to hurt the same, by the same token, the wounds of the back of the head. There are multiple stab wounds of the back of the head. You know, at some point, the assailant realizes that he is not getting through the skull with that knife because the knife is not getting stuck. So, yet we have multiple wounds of the back of the head. Either they are a deliberate – if the – they are subsequent to the wounds of the back, you know, he's either alive or – I'm sorry, if they're before the wounds of the back, he's alive or they're a deliberate [106] attempt to cause pain. You know, the options are very limited.

Q. Right. If – I think you testified at trial, that one of these stab [sic], and I believe it was this one here, was the stab wound that pierced Mr. Scanlon's heart and entered his ventricle, is that correct?

A. That's correct.

Q. Now, if we can assume that that was the last wound, assume that fact, can – do you have an opinion to a reasonable degree of medical certainty as to whether or not the wounds of the head, the stab wounds of the head, were either meant to inflict pain or whether they – the decedent was conscious for those wounds?

A. Well, if we eliminate the wounds of the back, there is nothing about the wounds of the back of the neck, the sides of the neck, and the head to cause immediate death. One may, indeed, have caused him to fall, primarily, because it cuts into the spinal – into the spinal cord itself, and it would not be unusual for this person to lose some sort of function, because it's pretty high up. So, we probably lose some arm and some leg function but the others,

there is nothing about them that would cause immediate lethality or immediate death.

Q. Is there anything about that – those wounds that would cause immediate unconsciousness?

[107] A. No, not necessarily immediate unconsciousness.

Q. So, is your testimony, Doctor, that the decedent could have been conscious for these 16 stab wounds in the neck and the back, it's a possibility, correct?

A. If he was not rendered unconscious by the wound to the back of the head, and we have a substantial wound to the back of the head with, obvious, bruising of the brain.

Q. Do you have an opinion as to whether or not that, in fact, caused unconsciousness?

A. One cannot be absolutely sure, but it is not unusual for a wound which causes bruising of the brain and hemorrhage in the coverings of the brain to cause unconsciousness. That would not be unusual at all.

Q. Then assuming that he was conscious for that wound, would that have inflicted pain?

A. Yes, indeed, until for this – during the momentary lapse from that wound until he lost consciousness, there would be pain.

Q. And assuming that the decedent was conscious for these 16 stab wounds to the back of the head and the neck, if the decedent was conscious, would that have caused pain?

A. It most certainly would have.

Q. What about the lacerations and the fracture on the front of the face if the decedent was conscious, would that have caused pain to Mr. Scanlon?

[108] A. Indeed it would have. No doubt about it. I mean, the nose is an extremely sensitive area.

Q. Could you tell the Jury what you mean by pain, medically, what is pain, what is that?

A. Medically, pain is the stimulation of a nerve ending which takes the impulses from the nerve ending to the brain that says something has stimulated me and there are pain sensitive nerve endings which the brain interprets as pain. In layman's term, pain is something that hurts.

Q. Now, assuming Doctor, that the blunt force injuries occurred first, in this case to Mr. Scanlon, then also assume that the 16 stab wounds of the neck and the head occurred next and that the Defendant, the perpetrator, the assailant, had to walk from an area of the bar into the kitchen to get a second knife, a butcher knife, which I think you examined, and would that knife cause these wounds in the middle of the back. Assuming those facts and evidence, do you have an opinion, to a reasonable degree of medical certainty, as to the length of time that would have taken to inflict those injuries?

A. It would take some period of time, no, several minutes primarily, because we have evidence for a struggle.

Q. What about the fact that there were two knives used and also various bottles used as instruments of infliction of pain?

[109] A. Well, in a – he's behind a bar and behind a bar, there are lots of stacks – stacked bottles. No, he obviously doesn't take very long to grab a bottle and hit. I would say, definitely, several minutes at the minimum. Now, it could have been longer, the answer is, yes but can I medically say that it has to be longer, there is nothing which I see that I can unequivocally say it has to be 15 minutes or it has to be 10 minutes.

Q. Doctor, do you have an opinion, again, to a reasonable degree of medical certainty, based on the factors that you have testified to, based on the multiplicity of wounds, based on the locations of the wounds, based on the fact that there was a – there was multiplicity of instruments, do you have an opinion, to a reasonable degree of medical certainty, as to whether or not the perpetrator, the Defendant, had a deliberate attempt to inflict pain to this decedent? Do you have that –

MS. DANTOS: I object.

Q. – you have that opinion, first of all?

MS. DANTOS: I object, your Honor.

THE COURT: As to the pain.

MR. MOYER: No, deliberate attempt to inflict pain.

MS. DANTOS: On the part of the Defendant.

[110] MR. MOYER: Based –

THE COURT: Overruled.

MR. MOYER: Thank you.

THE COURT: Overruled, we'll permit it.

Q. You may answer it. Do you have that opinion, first of all without saying what that opinion is?

A. Yes, I have a – yes I have an opinion.

Q. And what do you base that opinion on?

A. The – the multiplicity, the distribution, the repeatedness, in that one knows that he is in a non-lethal area in a sense that he has not caused lethal injury because the knife has not gone through. Therefore, to persist in stabbing an area in which one did not hope to have the knife penetrate and in which one already knows that the knife is br – has a broken tip in it.

Q. You're talking about the stab wounds in the head and the neck, now?

A. Yes. No, obviously, the person is deliberately trying to cause pain.

MR. MOYER: With the Court's indulgence. That's all, you may cross.

CROSS EXAMINATION

BY MS. DANTOS:

[111] Q. Good afternoon, Doctor.

A. Good afternoon.

Q. Dr. Mihalakis, Mr. Moyer asked you to assume a lot of things. Isn't it your testimony, though, that you cannot teil the order of the wounds, wasn't that your prior testimony?

A. That's – that's correct.

Q. So, you don't know to any degree of medical certainty which one of those wounds came first or which came last, correct?

A. That's true.

Q. Okay. And –

A. On a strict medical basis can I separate them, that's very, very true, Miss Dantos.

Q. Okay. So, and I believe it was also your testimony that other than the defense wounds, you can't say to a degree of medical certainty whether or not he was conscious for any of the other wounds other than the defensive wounds, correct?

A. Other than the defensive wounds, that's true except that we have to have some explanation for the others.

Q. Well, as far as your testimony that you – you can't determine to any medical degree that he was conscious during those other wounds, can you, as opposed to alive? I understand your distinction, but you can't say whether or [112] not he was conscious.

A. I have a problem with that, primarily because of these wounds. We have these scrapes and unfortunately, we have limited options as to where were they. These are non-lethal wounds made by a broken bottle. Now, either they are suffered when a person is conscious or if he's unconscious, somebody is deliberately trying to disfigure him. If we're willing to give those, in other words, we're willing to accept that those are the options, then I would agree with you.

Q. Okay. Well, let me ask you this. The blunt force injury to the back of the head. I believe you testified earlier that that was a tremendous force, sufficient to bruise the brain.

A. Yes.

Q. That injury in it [sic] of itself could render someone unconscious, couldn't it?

A. Yes, indeed, yes.

Q. Okay. And so that if that was, and I'm asking you to assume that that's the first injury, okay, if that was the first injury, the blunt force to the back of the head, then he would be rendered unconscious if that's possible, correct? It's possible that he could have been rendered unconscious from that point.

A. If that's the first injury after the hands you [113] mean?

Q. Correct.

A. Yes.

Q. Okay. Now, Mr. Moyer asked you to assume that this back injury occurred first, right?

MR. MOYER: Which one?

MS. DANTOS: The back injury that –

MR. MOYER: No.

MS. DANTOS: – punctured the ventricle.

A. I think he said last.

Q. Last, okay, I'm sorry. Now, the burning of the body that you testified to previously, that was postmortem, correct?

A. Yes.

Q. No way that was done when the victim was alive or conscious, correct?

A. Yes, I believe that's true.

Q. Okay. And isn't it also true that if – if it – that – take my possibility that the first blow was the blunt force injury after the defensive wounds, after this struggle that you testified to, okay, and he's rendered unconscious by the blunt force injury. You don't know to any degree of medical certainty who did all these wounds or how many people did them, do you?

MR. MOYER: Objection, that's been decided [114] by the Jury.

THE COURT: Would you repeat that question again please? You do not know what?

MS. DANTOS: How many people were involved.

MR. MOYER: Well, first of all, that's not an accurate recitation of the question. She said, first of all, you do not know who did it and that's what I objected to because the Jury has decided who did it.

MS. DANTOS: Okay, then I'll withdraw that part of the question.

THE COURT: All right, very good.

Q. Dr. Mihalakis, you cannot say, can you, how many people were involved in this can you?

A. I only see wounds, I do not see assailants.

Q. Okay. And you do not know any of the order of the wounds other than defensive wounds, correct?

A. That's correct with a reasonable medical certainty.

Q. Okay. So, it is possible, is it not, that other than the defensive and possibly other than the lacerations on the face, that James Scanlon was unconscious for all of the stab wounds?

A. It's possible, yes.

MS. DANTOS: Thank you.

REDIRECT EXAMINATION

[115] BY MR. MOYER:

Q. If the blunt force injury to the head was the first one, though, that would have caused pain wouldn't it?

A. Yes, I –

Q. No matter which one's the first one, the first one's going to cause pain, right?

A. Yes, indeed.

Q. And if you assume Miss Dantos's hypothetical that that was the first one, that would have caused pain?

A. Yes.

Q. Can you quantify the amount of pain that that would have caused?

A. I can quantify it but, you know, what is a lot. You know, quite a bit of pain, primarily, because we have splitting of the skin, we have crushing, and we have bruising. So, I guess one has to have his head split open, so to speak, to appreciate, but it does cause a considerable amount of pain.

Q. Miss Dantos also asked you about if more than one person was involved in this and this is something that was brought up at the trial concerning fragments of hair that were found and – excuse me – hair that was found in the decedent's hand. Was there hair found in the decedent's hands?

MS. DANTOS: I'll object, your Honor.

[116] MR. MOYER: They've raised it again.

MS. DANTOS: Your Honor, could we approach the bench?

THE COURT: Well, really, that's not the issue here is it?

MS. DANTOS: Right.

MR. MOYER: But she's raised it by –

THE COURT: That has been decided as you indicated at trial.

MR. MOYER: She raised it on cross examination by asking whether or not he could tell more than one person was involved.

MS. DANTOS: As to the injuries.

MR. MOYER: I have a right now to go into that on redirect.

MS. DANTOS: As to the injuries, your Honor, I did not get into the hair.

MR. MOYER: The issue's been raised, your Honor.

THE COURT: And still, may I ask – may I see Counsel up here a second?

(Whereupon Counsel approach side-bar)

THE COURT: On aggravating circumstances.

[117] MR. MOYER: That's right, but it's been raised now, and I just want to make sure that this Jury's aware, because I think they were misled, not intentionally, but they were misled as to findings of hair in the hand. The autopsy report says, that there were fragments of hair found in the hand.

MS. DANTOS: Well, you can't go back and clarify that now.

MR. MOYER: You've – but you've raised, my friend.

MS. DANTOS: I did not.

MR. MOYER: You've raised by saying –

MS. DANTOS: Judge, I –

MR. MOYER: Wait, can I finish?

MS. DANTOS: Sure.

MR. MOYER: You've raised it by saying, can you tell whether or not more than one person was involved in this. By that – raising that fact, that has put that seed in the Jury's mind, and I have the right to clear that up.

MS. DANTOS: Your Honor, no, as to the injuries, that's what I was getting at, as to the actual stab wounds. That fact about the hair, has nothing to do with the aggravating factors –

MR. MOYER: Then why did you ask the [118] question?

MS. DANTOS: We're talking about whether or not there was torture here not whether or not there was hairs.

MR. MOYER: Then why did you ask the question whether or not you could tell there's more than one person involved?

MS. DANTOS: To see if he knew. To see if he could tell.

MR. MOYER: And what's – what's the relevance of that?

MS. DANTOS: As –

MR. MOYER: 'Cause you – you're going to argue it that's why. Judge, they've raised –

MS. DANTOS: Judge, – –

MR. MOYER: – it again, they raised it in the case in chief –

MS. DANTOS: It's not appropriate.

MR. MOYER: – they raised it again, and I have the right to clear up the misunderstanding that I believe this Jury has about hairs found in the decedent's hands. By Mr. Charles – his actions, it looked as though there

were clumps of hair. The autopsy report, which they have a copy of, says, fragments of hair were found.

MS. DANTOS: And we read that to him when [119] he was on cross with Mr. Charles.

MR. MOYER: And the word fragments never came up.

MR. CHARLES: Do I get to say –

THE COURT: Was it a question that was asked.

MR. CHARLES: There was also things from Bennett. Bennett said, hairs were retrieved, not fragments, hairs, Judge.

MR. MOYER: But he's the one that did the retrieving.

MR. CHARLES: But hairs was what Bennett said.

MR. MOYER: Fine.

MR. CHARLES: We use Bennett's words.

MR. MOYER: Fine.

MR. CHARLES: It's not appropriate now.

MS. DANTOS: Judge, –

THE COURT: That shouldn't have been asked and that's the trouble.

MR. CHARLES: I think in the beginning –

MR. MOYER: She raised it.

MR. CHARLES: – in order – was the order of the blows, Judge.

THE COURT: That's the trouble.

[120] MR. CHARLES: Because you have them going to get a second knife, an order of blows. I think it was in response to then if one person went to get the knife –

MR. MOYER: Again, I have to argue against two – two different Counsel, and I object to that.

MS. DANTOS: He's the one that did the original cross.

MR. MOYER: Well, we're not on that now.

MR. CHARLES: It was in the order of the stab wounds, Judge. The testimony was, someone else went to get another knife.

THE COURT: Do you admit you asked the question?

MS. DANTOS: I asked, does he know how many people were involved in the stabbings? I didn't ask anything about the retrieving of the hair that was all covered –

MR. MOYER: That's raising the issue again.

MS. DANTOS: No it's not, not [sic] it's not raising the issue.

MR. MOYER: It's raising a red herring to this Jury –

MS. DANTOS: We're talking about the stabbings.

MR. MOYER: – once again as it was before.

[121] MS. DANTOS: It's not red herring. It's to find out if he can tell or not.

MR. MOYER: And what's the relevance of it then 'cause you're going to argue that's possible that there's another person involved just to cause reasonable doubt.

MS. DANTOS: Well, –

MR. CHARLES: Your Honor, it was a question as to the order of the knife, going to the kitchen to get a second knife.

MR. MOYER: I have to object to Mr. Charles participating in this argument.

MS. DANTOS: Your Honor, –

THE COURT: All right.

MS. DANTOS: – my objection is to going back into the hair now to clarify, as Mr. Moyer said, the only purpose to clarify something that happened on the other phase of the trial, and I think that's improper.

MR. MOYER: But she's raised it again. If she hadn't raised it, I wouldn't have had the right to do it, I admit.

MS. DANTOS: Well, your Honor, I object.

MR. MOYER: But now that it's raised, I think I have the right to go into it. She's opened the door.

[122] THE COURT: It seems to me we're having problems with it, I guess we wouldn't be here, but it was asked.

MS. DANTOS: It –

THE COURT: All right. Overruled, we'll permit it.

(Whereupon side-bar conference concludes)

BY MR. MOYER:

Q. I think you testified at the trial that you found hair in the decedent's hand, is that correct?

A. Yes, Mr. Moyer.

Q. Could you further describe the hair that you found?

A. There were fragments of hair in the left and right hand which were recovered and surrendered to Sergeant Kolowitz.

Q. And when you say, "fragments" do you have any idea how many hairs you had, you found?

A. No, I really don't. They were surrendered directly to the police. I'm sure they're available.

Q. But the word that you put in your autopsy report was fragments, is that correct?

A. That's correct.

MR. MOYER: That's all.

[123] RECROSS EXAMINATION

BY MS. DANTOS:

Q. Doctor, you were asked earlier in the trial to look at the report regarding that, weren't you, regarding the fragments of the hair that were found?

A. That's correct.

Q. Okay. And you cannot say, – this autopsy was performed back in January, right?

A. Yes.

Q. So, you can't say now, you don't remember how many hairs you found in each hand, do ya?

A. No, I've already said that to Mr. Moyer, that I can – I do not recall.

Q. Okay.

A. I'm sure they're recoverable.

MS. DANTOS: Okay, thanks.

THE COURT: All right. Is that it with this Witness? Any reason why we can't excuse this Witness?

MR. MOYER: Excuse me your Honor. That's all.

THE COURT: All right. Any reason we can't excuse this Witness?

MR. DANTOS: No, your Honor.

THE COURT: Very good. Doctor, thank you [124] very much.

THE WITNESS: Thank you, your Honor.

THE COURT: Do you have another witness, Mr. Moyer?

MR. MOYER: No, your Honor. I would ask that the evidence that was introduced at the trial in chief be incorporated into this hearing so that the Jury can also review that evidence for purposes of the sentence in this case.

THE COURT: Are you tal – I'm not quite sure what you mean by that. You mean all of the evidence, all of the physical evidence?

MR. MOYER: Let me approach, your Honor.

THE COURT: All right.

(Whereupon Counsel approach side-bar)

MS. DANTOS: From the trial?

MR. MOYER: Yeah.

MS. DANTOS: Yeah.

THE COURT: You're talking about what the testi –

MR. MOYER: All testimony and all Exhibits as well.

THE COURT: So, they can be argued then.

[125] MR. MOYER: Sure.

MS. DANTOS: And, your Honor, I have no objection but with that same objection that we had as to Commonwealth Exhibit 5 on the photo of the body. You're not moving for the Transcript, correct? That's not in, is it?

MR. MOYER: No.

MS. DANTOS: You're talking about the trial.

MR. MOYER: No, –

MS. DANTOS: Okay.

MR. MOYER: – I'm not going to ask that the Transcript itself be admitted into evidence.

MS. DANTOS: Okay, then I have no objection.

THE COURT: No objection then, all right, they'll be admitted.

(Whereupon side-bar conference concludes)

THE COURT: Mr. Moyer then, if I understand you correctly, you rest?

MR. MOYER: Commonwealth rests.

THE COURT: All right. And as I indicated, we will adjourn then till tomorrow morning at 9:30 and [126] Counsel for Defendant will be prepared, at that point, to proceed, very good.

MS. DANTOS: Ready, your Honor.

THE COURT: All right. All right, now, before you go, though, ladies and gentlemen – yeah, would you please take that down, thank you. All right, very good. Now, ladies and gentlemen, as I indicated earlier, since both parties have agreed to the fact that we need not sequester you for this evening, you will be permitted to return home, to return tomorrow morning at 9:30 to the same room, the Jury Room, over here. And now, it becomes extremely incumbent upon you, because I did see a

reporter, at least one reporter, here from the Morning Call, and I am assured there will be something in the paper as to the verdict and maybe a possible total rehash of this whole case. Again, you are instructed that you are to ignore and have – do not read or look at anything that might appear in the newspaper. Even though you have reached a verdict with respect to the trial in chief, if you'll notice, one of the motions that was last made by Counsel was the evidence that was submitted in that trial for the purpose of reviewing – by way of argument by Counsel as to this being an aggravating circumstance and again, we do not want you tainted by anything that might appear in the newspaper with regard to the reporter's memories as to what was [127] said. It will be your memories of what was said that is important. You should not discuss, again, the case or anything about what is before the Court with anyone. Again, for the same reason, it is your ultimate decision in this case that will control as to what finding will be made and as to the burdens of each party with respect to this Sentencing Hearing that we're endeavoring to complete here now. So, again, I can't emphasize to strongly the importance that all of you refrain from any review of anything that might appear in the newspaper or anything that might appear on the television or radio for that matter. I think that covers everything. Is there anything else that I may have missed?

MR. MOYER: No, your Honor.

MS. DANTOS: No, your Honor.

THE COURT: All right. All right, then we will adjourn then until tomorrow morning at 9:30.

MR. CHARLES: Your Honor, we need to see you if we could on another matter.

THE COURT: A what?

MR. CHARLES: We need to see you after the Jury leaves on another matter.

THE COURT: All right, then we'll excuse the Jury and then we'll adjourn.

COURT CRIER: All rise please, Court will [128] be adjourned until tomorrow morning at 9:30, 9:30 tomorrow.

(Whereupon Jury leaves the Courtroom)

COURT CRIER: All rise please, Court is again in session, you may be seated.

THE COURT: All right, now, –

MR. CHARLES: Your Honor, there is another matter I would like to address to the Court.

THE COURT: Very well.

MR. CHARLES: Okay. Maybe Attorney Dantos can advise – at this point in time, since it's – we're on our side of the case, the Defense, plans to call various witnesses in mitigation to argue for a Sentence of Life Imprisonment. Since Attorney Dantos has that information, is running that side of the case, I'll let her advise us as to who the witnesses are.

MS. DANTOS: Your Honor, I – we had planned to call Nick Rompilla, Darlene Rompilla, Aaron Rompilla, and Ron's sister, Sandy.

THE COURT: These are all family members?

MS. DANTOS: Correct.

MR. CHARLES: Well, – we've been advised by the Defendant, prior, that he did not want us to call any of those witnesses. It was our intention to call them, [129] and it is still our intention, if you agree, I want to clear up, because I don't want to get into a situation where we're told not to and then we have to then turn around, and it's so important to call them now 'cause – because of where the case is.

THE COURT: And prepare for tomorrow.

MR. CHARLES: Yes.

THE COURT: There's no question, that's why we postponed it a little more.

MR. CHARLES: So, I wanted – I wanted you to have an opportunity to be heard on that issue for the record.

THE COURT: All right. Well, let me ask you this, Mr. Rompilla. Is that accurate what they've just outlined, that you've instructed them not to put or call any of the family members to put on any evidence?

MR. ROMPILLA: I did, but I changed my mind. I agree with them.

THE COURT: You're willing to do it?

MR. ROMPILLA: Yeah.

THE COURT: Very good. I must say, Mr. Rompilla, in all fairness, we were quite concerned, because it's very serious that what you're facing here and mitigating circumstances under the circumstances may very well change the whole result. Very good, then we have your [130] word then that you – they should go ahead?

MR. ROMPILLA: Fine.

THE COURT: I think it was a wise choice, I'll be quite frank with you. I would have strongly recommend [sic] it. Counsel has really done a superb job, Mr. Rompilla, in my opinion. Now, I realize the result may not have been what you wanted, but I think they did a superb job on your behalf. I guess sometimes, and I'm sorry to say, some people measure these things totally by results and that's not true in the Law. I guess we'd like – we'd all like what we want, but it doesn't turn out that way. I think they must be measured by how well a job they did as a Lawyer, and I must say, in all fairness, I don't think you could have gotten a better job with anyone. Well, all right, well I'm glad that decision has been made then.

MR. CHARLES: Thank you, your Honor.

THE COURT: All right, very good. All right, Mr. Schaeffer, we will adjourn until tomorrow morning.

COURT CRIER: Court will be adjourned until tomorrow morning at 9:30.

(Whereupon testimony concludes for the day)

CERTIFICATION

I.

I hereby certify that the proceedings are contained fully and accurately in the recordings taken by me in the hearing of the above case and that this is a correct transcript of the same.

DATE: November 1, 1989

/s/ [Illegible]
COURT MONITOR

IN THE COURT OF COMMON PLEAS
OF LEHIGH COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	)	NO. 682/1988
vs	)	Jury Trial November 2, 1988
RONALD ROMPILLA	)	

VOLUME VII NOTES OF TESTIMONY HEARD BEFORE THE HONORABLE DAVID E. MELLENBERG, J.

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[3] (Court called to Order)

THE COURT: Will someone please inform the District Attorney that 9:30 means 9:30. We don't mean 9:35, we mean 9:30. Is he anywhere – oh, here he comes. Mr. Moyer, please 9:30 means 9:30, all right. Oh, do you have, by any chance, the proposed Verdict Slip?

MR. MOYER: Yes, I do.

THE COURT: I think this is the one Counsel has agreed to, you've reviewed it?

MS. DANTOS: Yes, Your Honor.

THE COURT: All right, thank you. All right, you may bring the Jury in please.

(Whereupon the Jury enters the Courtroom)

THE COURT: Good morning. all right, now, Miss Dantos.

MISS DANTOS: Your Honor, Counsel, members of the Jury. I was introduced to you a long time ago. My name is Maria Dantos. I sat through the Trial the same as you did, and I heard the same things that you heard, and you heard some horrible things come out, some horrible facts that you found Mr. Rompilla guilty of First Degree Murder. Now, is his Sentencing Hearing, this is it. This [4] is as real as it gets. This is life or death. I'm going to ask you to do what you promised me you'd do and keep an open mind during his. You told me that you could consider life, and I'm asking you to do that. I'm going to present some witnesses to you, and I want you to listen to them, their [sic] his family, and I know that we all felt it when we saw the Scanlons' crying during the Trial. And this is Ron's hearing right now, and I know I felt it, too when the Verdict came back, and I saw Ron's family crying. So, please, keep a open mind and listen to what they have to say about him. Let them show you a little bit about him, thanks.

THE COURT: You may call your first witness.

MS. DANTOS: Your Honor, I call Darlene Rompilla.

DARLENE ROMPILLA, WITNESS, SWORN

DIRECT EXAMINATION

BY MISS DANTOS:

Q. Darlene, for the record, would you state your full name, please?

A. Darlene Rompilla.

Q. Darlene, how old are you?

[5] A. 38.

Q. And can you tell me what your relationship is to Ron?

A. I'm Ron's sister-in-law.

Q. What do you do for a living, Darlene?

A. (Crying).

Q. Can I get you some water?

A. I work at the Morning Call.

Q. Darlene, how long have you known Ron?

A. 19 years.

Q. And he was living with you, wasn't he?

A. Yes.

Q. How long was he living with you?

A. 3½ months.

Q. And do you have children at home?

A. Yes, I do.

Q. And how is his relationship with your family?

A. When Ron – when Ron was going up for Parole, my kids were very afraid, they didn't know him, and they didn't want him in their home. And the day he came home, my daughter came home from school and went right to her room. She wouldn't even look at him but within two or three days, they – they started opening up to him, and they became very attached to him. He was very good in our home.

[6] Q. Did he help you out?

A. Yes, he did. He did cleaning, dusting –

Q. How did he help you?

A. – vacuuming, did some wash, everything but cooking.

Q. Stayed around the home?

A. Yeah.

Q. What do you think of him as a person? What do you think of Ron as a person?

A. As a family member, he was a good family member.

Q. Does he feel strongly about family?

A. Yes, yes. He respected our family very well.

Q. When he was in prison before, did you have contact with him?

A. Yes.

Q. Did you go to visit him?

A. Yes, we did.

Q. As often as you could?

A. Yes.

Q. And did he write to you?

A. Yes, there were lots of letters.

Q. And what kind of things did you talk about?

A. Family, his son, his wife, his brothers and sisters.

Q. How has his relationship with his son been?

[7] A. Good.

Q. Good. Darlene, how do you feel about – how do you feel about the Scanlon family?

A. (Crying) I feel very bad for them.

Q. Did you know Jim Scanlon?

A. Yes, I did.

Q. And how did you know him?

A. From going into the Cozy Corner on occasions.

Q. And you feel for the Scanlon family?

A. Very much, very much.

Q. And how do you feel about the fact that Ron has been convicted of murdering Mr. Scanlon?

A. I don't believe Ron actually did it but something we're going to have to deal with now.

Q. Darlene, how has this whole thing from the arrest through the Trial, how has all of this affected your family?

A. It's been hard. We go to bed crying, we wake up crying, it's been very hard on my children.

Q. Darlene how do you feel about the possibility that Ron may be electrocuted?

A. (Crying), we want Ron alive even if it's in jail, we want him alive.

Q. Even if it's for the rest of his life?

A. Yes.

[8] Q. This is the last chance that you'll have to talk to the people that are going to sentence him. Is there anything else that you want them to know?

A. I don't think I can.

MS. DANTOS: Thanks, Darlene.

THE COURT: Mr. Moyer.

CROSS EXAMINATION

BY MR. MOYER:

Q. Mrs. Rompilla, you've known Ron for 19 years, is that correct?

A. Yes, sir.

Q. And for that 19 year period, he's lived with you for only 3½ months, is that right?

A. Yes, sir.

Q. You said something about Parole. When he was left out on Parole, is that correct?

A. Yes, sir.

Q. The children were afraid of him at first?

A. My children didn't know him.

Q. And they were –

A. All they know is what they heard from other people.

Q. Right. And at first, they were afraid of him, correct.

[9] A. Yes, before they knew him.

Q. Right.

A. Before he came into our home.

Q. Right. When was this?

A. September of 1987?

MR. MOYER: No other questions.

THE COURT: Thank you very much, Mrs. Rompilla.

MISS DANTOS: Nick Rompilla.

NICHOLAS ROMPILLA, WITNESS, SWORN

DIRECT EXAMINATION

BY MISS DANTOS:

Q. Nick, for the record, could you give them your full name, please?

A. My name is Nicholas Rompilla, Junior.

Q. Nick, how old are you?

A. 46.

Q. And you are Ron's brother?

A. His brother, yes.

Q. What do you do for a living, Nick?

A. I'm interior, exterior painter.

Q. I'm sorry?

A. Interior, exterior painter, I have my own business.

[10] Q. Have your own business and did Ron work with you?

A. Yeah, he worked for me for about 3½ months.

Q. You're Ron's brother?

A. Right.

Q. Did you guys grow up together?

A. Yes, we did.

Q. How would you classify your relationship with him? What would you say about your relationship with Ron?

A. As long as I know him, it's good. We never had a problem, you know.

Q. Do you feel close to him?

A. Very much so, yes, I do.

Q. Do you – did the two of you talk about things?

A. Yes, we talked.

Q. And when he was in prison, did you visit him?

A. Yes, every chance I could possibly get, yes, I did.

Q. What kind of things did he talk about?

A. Well, sometimes when he thought about when he was going to get out, what he wanted to do, talked about family, how everything is.

Q. What were some of the things he wanted to do?

A. Try to get his life together. Maybe get back to – back with his wife and back with his kid, but I don't think he really had a chance, you know, 'cause I asked for Halfway House for six months, and they said they couldn't [11] give it to him, because it was crowded with alcoholics and that there and addicts, it was full.

Q. So, you took him into your home?

A. So, I took him in my home, yes.

Q. And did you help him with trying to get his relationship with his son together and –

A. Well, we talked about it, you know, but it – I guess it was actually up to his wife, you know.

Q. Was – is this hard for Ron?

A. Yes, it is – it's hard. I think he couldn't adjust too well to it at the present time.

Q. He had a hard time adjusting?

A. Yes, he did, yes.

Q. Now, when he was living with you, he was working with you, did he help you out around the house, did he help you with other things?

A. Yes, he did. If I didn't do it, he'd do it, you know, that's the way it goes.

Q. Okay. Brothers?

A. Right.

Q. Now, Nick, I know that you knew Jim Scarlon, right?

A. About 10, 11 years, yes.

Q. And how do you feel for the Scanlon family?

A. I feel pretty bad. My heart goes out to them. I mean, I cried, my wife cried, we cried for Jimmy then when [12] it was all over, I cried for my brother. I was very hurt, you know, I still feel sorry for him, there's not much I can say or bring him back.

Q. Nick, how do you feel about the possibility that this Jury might impose a penalty of death of electrocution?

A. Well, I – I don't know, I don't think my brother did it. I think there's too many consistent – inconsistencies of that there, and I feel he's told me the truth. I don't think he'd lie to me.

Q. You believe him?

A. I believe him very much.

Q. You understand the Jury's convicted him?

A. Yes, I am, yes.

Q. Is there anything else that you want to tell the Jury, the people that are going to sentence him?

A. Only thing I can say is, just have mercy on him, that's all. I – I don't know, that all I can say.

MS. DANTOS: Thanks, Nick.

CROSS EXAMINATION

BY MR. MOYER:

Q. Mr. Rompilla, you said that the Defendant worked for you for 3½ months, is that correct?

A. Yes, right.

[13] Q. When was that?

A. Well, the second day he got out of Huntington.

Q. Pardon me?

A. The second day he got out of Huntington.

Q. When was that?

A. Last year, September.

Q. September of 1987?

A. '87, yes.

Q. And he worked until he was arrested on these charges, is that correct?

A. He was still working for me at that time, yes.

Q. That was in January of this year?

A. Right.

Q. And you've indicated you don't feel that your brother is guilty of these offenses, is that correct?

A. I feel that he didn't murder Mr. Scanlon.

Q. Well, –

A. I feel that he was there, but I feel that he didn't kill him, that's all.

Q. That you feel what?

A. I said, I feel that he was there, but I don't think he murdered Mr. Scanlon.

Q. Well, do you realize that this Jury has already decided that question, and they –

A. Yeah, I understand that, yes.

[14] Q. – have decided that he did, in fact, murder Jimmy Scanlon. Are you aware of that fact?

A. I'm aware of that fact, yes.

Q. Do you feel that he wasn't guilty of the rape that took place in 1974 at Joe's Place, the rape of Joe Macrenna? Do you think he was guilty of that?

A. I don't know.

Q. You don't know. How about the Burglary?

A. I don't know.

Q. How about the Theft?

A. I don't know, I wasn't there.

Q. But you don't think he's guilty of this?

A. No.

MR. MOYER: No other questions.

MISS DANTOS: One more.

REDIRECT EXAMINATION

BY MISS DANTOS:

Q. Nick, aside from your feelings about this case, all right, and whether you believe or not believe, what are you asking of this Jury?

A. Well, I'm asking for them to – I don't – one life is done with. I don't see why another life is going to take Mr. Scanlon's place, you know, I don't see any sense [15] to it.

MISS DANTOS: Okay, thanks, Nick.

THE COURT: All right, thank you very much, Mr. Rompilla.

THE WITNESS: Thank you.

MISS DANTOS: Robert Rompilla.

ROBERT ROMPILLA, WITNESS, SWORN

DIRECT EXAMINATION

BY MISS DANTOS:

Q. Bobby, for the record, could you give your full name, please?

A. Robert Rompilla.

Q. Bobby, are you Ron's brother?

A. Yes, I am.

Q. How old are you?

A. 31

Q. What do you do for a living?

A. Production worker.

Q. Bobby, we're here because the Jury has convicted Ron of First Degree Murder. How do you feel about his being convicted?

A. I feel there wasn't strong enough evidence for him to be convicted.

[16] Q. You believe in him?

A. Sure do, 100%.

Q. Okay. What kind of a relationship would you say you had with him, with Ron?

A. Excellent relationship for the time that he was out with me, he was excellent.

Q. You got close in those months?

A. Very close.

Q. And was there a period of time when you were in the Service?

A. Yes, there was.

Q. Okay. And when was that?

A. 1976 to 1979.

Q. Okay. So, for those three years, you didn't see Ron, right?

A. No, just by writing letters.

Q. I'm sorry?

A. Just by letters.

Q. By letters.

A. Right.

Q. Okay. And while he was in prison on his other charges, did you see him?

A. Yes, I did.

Q. Okay, you visited him?

A. Yes, I did.

[17] Q. And he wrote to you?

A. Sure did.

Q. What kind of things does Ron talk about with you?

A. Every day, outside world, how's everybody doing, the family, how I'm doing, and his wife and kid and –

Q. Concerned for his family?

A. Very much so.

Q. And his son?

A. Very much so.

Q. Bobby, how is this whole thing affected your family?

A. We all still got doubts, because I don't think there was strong enough evidence. You know what I mean, the place puts him there but as far as going –

MR. MOYER: Objection, not being responsive to the question.

A. Like I said, it's -- I'm saying what I feel, whatever he says, it's me. I don't think there's strong enough evidence for him –

MR. MOYER: Objection, not responsive to the question.

A. – it puts him there but as far as him doing it, I don't think he did it to this day –

MR. MOYER: Objection, not responsive to the question –

[18] A. – and I'd swear on that.

THE COURT: All right.

MR. MOYER: – I ask that it be stricken from the record.

THE COURT: Now wait, what was the question again?

MISS DANTOS: How it has affected him.

MR. MOYER: No, the question was, how did it affect the family.

THE COURT: All right, let's – I'll have to sustain the objection under the circumstances. Please, just answer the question, how it affected you?

THE WITNESS: Hurt bad, you know what I mean, well, what can I say.

Q. You're hurt?

A. Very much so. Especially, if I don't feel like he did it and not enough come out, what – how am I supposed to feel, you know what I mean?

Q. Okay.

A. Hey, nobody seen him, no eye witness, so, how can you – you know what I mean, I just don't see it.

Q. Okay, Bobby, but now, the Jury has convicted him, okay. I know you understand that, I know you do. Did you know the Scanlons'?

A. No, I didn't.

[19] Q. How do you feel about their pain?

A. No comment.

Q. Bobby, how do you feel about the possibility that this Jury could order that Ron be electrocuted?

A. I can't see them doing it, myself. I mean, I couldn't – I couldn't see them doing it for the fact, nobody seen him, there's – it's just – it's impossible, I just can't see it.

Q. You're having a hard time dealing with it?

A. Very much so. Like I said, it's – it's an opinion what they gave, which is a strong opinion, they convicted him. It just puts him there, it don't have him doing the thing, you know what I mean, there's not eye witness, there's nothing. The finger on the middle of the blade, what did he do, go like this? You know what I mean, what – you know what I mean, it just couldn't get it in there. There's no ha – there's nothing there that pertained for him to do it. Like I said, I don't have to – they got to make the decision, not me.

Q. Right. Okay, is there anything else that you want them to know about Ron?

A. That the 3½ months I knew him, he came out, and we went out and stuff like that, you're trying to say – probably trying to say, how can get close to him? I was very close to him. He confide in me, he loved my family, [20] you know, holidays were around, Thanksgiving, Christmas, he was there for all that. After all them years he wasn't there, he enjoyed it, he loved it, you know what I mean, I guess, he just didn't have a chance, I guess, like I said, they didn't give him no rehabilitation which was wrong, you know what I mean? That's like putting a little child on 7th Street and say, walk across the street. What's he going to do, he's going to get hit, you know what I mean? It just don't make no sense to me why they just didn't help him a little more when he came out.

MISS DANTOS: Okay, thanks Bob.

CROSS EXAMINATION

BY MR. MOYER:

Q. Mr. Rompilla, you weren't here through – throughout the whole Trial, were you?

A. One day.

Q. Pardon me.

A. One day.

Q. You were here one day. How do you know what the evidence –

A. Doesn't mean I didn't hear about it from my family –

Q. Excuse me. Let me ans –

[21] A. – 'cause I couldn't get off of work.

Q. Let me ask the question. How do you have any idea what the evidence is in this case? You were here for one day?

A. From my sister-in-law's calling me, everyone – they heard it, they were here every day.

Q. From other people?

A. By word of mouth is good by me if it's my family.

Q. From other people. You have no idea, of your own knowledge, –

A. From my family, they're not other people, –

Q. Excuse me.

A. – they're my family.

Q. You have no idea, of your own knowledge, what evidence this jury heard and what evidence they based their decision on, do you?

A. Yes, I do, I was here at closing arguments –

Q. Other than from other people telling you –

A. – when you brought it all out. So, there was –

MR. MOYER: Judge, could you please instruct the Witness to let me –

THE COURT: Mr. Rompilla, –

MR. MOYER: – answer my question?

THE COURT: – let him finish the question, then you may answer, all right, please.

[22] Q. You have no idea, from your own knowledge, other than for one day in this Courtroom, what the evidence is in this case, do you?

A. Correct.

Q. Now, you said, well, there was no eye witness, how can they convict him without an eye witness, right? Isn't that what you said?

A. Correct and there wasn't enough –

Q. Well, this Jury has already convicted your brother of First Degree Murder, that's a fact.

A. Does that mean it's right? Does that mean it's right?

Q. That's a fact.

A. That's not mean it right.

Q. It's a fact, though.

A. Facts ain't right all the time.

Q. This one is.

A. Why?

Q. Now, –

A. Because you say so?

Q. – you were asked by Ms. Dantos how you felt about the Scanlons', and your answer was what? No comment?

A. I don't know them. I don't know them so, therefore, I have no comment on it.

Q. No comment?

[23] A. Right.

Q. You also said that they didn't rehabilitate Ron Rompilla. Who's they?

A. The County, the system, or whoever.

Q. The system?

A. You know what I mean? Yeah.

Q. It's the system's fault, right?

A. I ain't saying it's the system's fault, but they didn't give the man a chance.

Q. It's our fault that Ron Rompilla killed Jimmy Scanlon –

A. I didn't say it's your fault.

Q. – is that what you're saying?

A. You just put guys out on the street and order – just go ahead and walk on some things. You don't do that stuff.

Q. Why can't he rehabilitate himself?

A. Why can't – why can't he get help like all the rest of the people get help?

Q. Why is it always the system's fault –

MS. DANTOS: Your Honor, I'm –

Q. – that Ron Rompilla killed Jimmy Scanlon?

MISS DANTOS: – going to object to his arguing.

A. It ain't the system's fault, I didn't say it was [24] the system's fault, but you didn't give the man a chance, that's what it is.

MR. MOYER: No other questions.

THE COURT: He's answered the question, all right.

REDIRECT EXAMINATION

BY MISS DANTOS:

Q. Bobby, just let me ask you something. Mr. Moyer's making a big deal out of it that you weren't here.

MR. MOYER: Objection.

Q. Bobby, –

THE COURT: All right, let's rephrase the question, please.

MISS DANTOS: All right, I'll withdraw that part of it.

THE COURT: All right.

Q. Bobby, you believe what you believe because Ron's your brother, right?

A. Correct.

Q. And because he told you something?

A. Correct.

Q. Okay. And you love him?

A. Correct.

[25] Q. And you believe him?

A. Correct.

Q. And it doesn't matter that this jury has convicted him of First Degree Murder, you still love him?

A. Yes, I do.

MISS DANTOS: Thanks.

THE COURT: Anything further, Mr. Moyer?

MR. MOYER: No other questions.

THE COURT: Very good, thank you very much, Mr. Rompilla.

MISS DANTOS: I call Sandy Whitby.

SANDY WHITBY, WITNESS, SWORN

DIRECT EXAMINATION

BY MISS DANTOS:

Q. Sandy, for the record, what's your full name?

A. Sandra Whitby.

Q. Sandy, how old are you?

A. 41.

Q. And what relation are to you to Ron?

A. His sister.

Q. Did you grow up with him?

A. Yes.

Q. How do you feel about Ron?

[26] A. I love him (crying) very much.

Q. Does he talk to you?

A. Yes.

Q. When he was in prison, did you visit him?

A. Yes and wrote to him.

Q. Okay, and he wrote to you?

A. Um-hum.

Q. What kind of things are important to Ron?

A. Family, his son, his wife, things my children were doing, my brothers.

Q. He asked a lot about the family?

A. Always.

Q. What kind of person do you think Ron is?

A. A good person, I've never seen the bad side of my brother, never. Every time I've been around him, he was nice and when he was on Parole, he came to my home for dinner, we showed films of my deceased mother and –

Q. When did you mother die?

A. In '81.

Q. In '81?

A. Um-hum.

Q. I'm sorry, you were showing films of your mother?

A. Yes, and he was interested in them, and he just loves us like we love him.

Q. How do you feel about what the Scanlon family's [27] been going through?

A. Oh, I feel bad for them (crying). I work at the hospital center and when I go by the Chapel, I pray for them (crying). I don't even know them, but I prayed for them and then when I heard that he was buried, I said my last prayer and now, I pray for my brother.

Q. And what do you pray for Ron?

A. That he can live, because we're not God, and we can't take people's lives (crying).

Q. Sandy, how do you feel about the possibility that this Jury may order him to be electrocuted?

A. I don't want it. I love my brother. Taking one life is never going to replace another life.

Q. And if he does get life, will you visit him?

A. Yes, I would, and I would continue to write and keep in contact with him.

Q. And stand by him?

A. Yes, I would all the way.

Q. And continue to love him?

A. Yes, and he's told me he didn't do this, and I believe him, I really do.

Q. Sandy, this is the Jury that's going to sentence Ron, is there anything else you want to tell them?

A. Just that I love him very much, and I truly believe he didn't do it. That's all.

[28] Q. And even though they've convicted him of First Degree Murder, what are you now asking them to do?

A. To let him live. He's a good person there is – he is.

MISS DANTOS: You can cross.

MR. MOYER: No questions.

THE COURT: Very good. Thank you very much ma'am.

MISS DANTOS: Call Aaron Rompilla.

AARON ROMPILLA, WITNESS, SWORN
DIRECT EXAMINATION

BY MISS DANTOS:

Q. Aaron, will you tell the Court your full name, please?

A. Aaron Rompilla.

Q. Aaron, how old are you?

A. 14.

Q. And what relationship are you to Ron?

A. He's my father.

Q. He's your father. Aaron, after your father was released from prison, did you start to have some regular visits with him?

A. Yes.

[29] Q. Did you enjoy that?

A. Yes.

Q. Were you getting to know him?

A. Yes.

Q. How do you feel about your father?

A. I love him.

Q. When he was in prison, did you visit him in the prison?

A. I don't remember, it was –

Q. You were young. If he was sent to prison, would you visit him then?

A. Yes.

Q. Do you feel as though you've gotten closer to him?

A. Yes.

Q. When you and your dad talk, what kind of things did you talk about?

A. Well, mostly things that I did, you know, that he – when he wasn't around and how I grew up and how I wanted to get back together.

Q. How he wanted to get back together?

A. Yeah.

Q. Family?

A. Yeah.

Q. Did you talk about your school?

A. Yeah.

[30] Q. And did you tell him what you're interested in?

A. Yeah.

Q. And how did he seem about that?

A. He seems happy for me and –

Q. Proud of you?

A. Yeah.

Q. How do you feel about the fact that your father's been convicted of murder?

A. (Crying) I don't think he did it.

Q. Do you believe him?

A. Yes.

Q. Aaron, how do you feel about the possibility of him dying in the electric chair?

A. I don't think it's right.

Q. Is there anything that you want to tell the Jury?

A. (Crying).

Q. Is there anything else?

A. (Crying), (nods negative).

MISS DANTOS: That's all I have.

MR. MOYER: I have no questions.

THE COURT: Very good. Thank you very much, Aaron, you may stand down.

MS. HAAS: They said they need a break. They said they can't take no more of this right now.

THE COURT: Okay. May I see Counsel up [31] here a second? We're going to take a recess. You can excuse the Jury, all right.

(Whereupon the Jury leaves the Courtroom)

(Whereupon Counsel approach side-bar)

THE COURT: They wanted a break.

MISS DANTOS: Me to.

THE COURT: Okay. How many more witnesses?

MISS DANTOS: I'm done, that's it.

THE COURT: Pardon?

MISS DANTOS: That's it, that's it.

THE COURT: Oh, is that it?

MISS DANTOS: That's it.

MR. CHARLES: What's the matter, Judge, what was that –

MISS DANTOS: They wanted a break.

THE COURT: They wanted a break. Let me ask you something. You didn't go over your sentencing sheet.

MR. MOYER: Verdict Slip.

MISS DANTOS: Verdict Slip.

THE COURT: Verdict Slip. Now, I guess it's a sentencing sheet, because I want to make sure –

[32] MISS DANTOS: Um-hum.

THE COURT: He outlines, what he's proposed and approved, fine. But nothing in here as to what you want.

MR. MOYER: No, that's the factor though. That's the exact verbatim factor from the 9711.

MR. CHARLES: Judge, in other words, everything in mitigation all falls under that category. It's not one factor –

MR. MOYER: It's a catch all.

MR. CHARLES: – versus three. Everything else is all within that –

MISS DANTOS: I think we might have some –

THE COURT: Well, –

MR. CHARLES: Yeah, we're going to have – Judge, before we finish –

THE COURT: I just want to make sure, that was my point. I don't want –

MR. CHARLES: Judge, we have to –

MISS DANTOS: Judge, we have some points for charge.

MR. CHARLES: We have points for charge.

MR. MOYER: That was taken right from 9711.

MR. CHARLES: Judge, we have Points for Charge, also, if we can have a couple of minutes to get [33] them.

MISS DANTOS: Yeah, I need a break before we close anyway.

THE COURT: Are you saying that's taken from where?

MR. MOYER: Taken right from the mitigating – it's the last one, any other evidence.

THE COURT: Oh, okay, so –

MR. MOYER: See, none of the other –

THE COURT: Well, my point –

MR. MOYER: None of the other seven are applicable.

THE COURT: Well, that was what I was asking. Are any of the others applicable as far as you're concerned. Well, that's what I was wondering, all right.

MR. CHARLES: But each – each one of the factors can be one mitigating factor catch all, it could be family, there one relationship, another mitigating factor could be age, that's one point.

THE COURT: All I'm interested in is whether or not this meets with your approval?

MR. CHARLES: It's all under within the catch –

MR. MOYER: Age of the Defendant?

MR. CHARLES: If he was like 18 or 19, [34] something like that, I'm saying in general.

THE COURT: Because this is summarizing one aspect of it, that's all.

MR. MOYER: But that's not.

MISS DANTOS: Yeah, we have additional Points for Charge –

MR. MOYER: Well, wait, he's not even listening.

MISS DANTOS: – that I would like to present to you.

THE COURT: Okay.

MISS DANTOS: Okay, and I think that will clear up our part of it.

THE COURT: Okay, all right.

MISS DANTOS: Judge, –

MR. CHARLES: Can we have –

MISS DANTOS: – since we're going to go be closing next, I'd like a little extra time.

MR. MOYER: Well, we're going to go over the points that you want to –

MISS DANTOS: Yeah, –

MR. MOYER: – Points for Charge.

MISS DANTOS: – I want to go get them.

MR. CHARLES: Yeah, we want to go down and get them.

[35] MR. MOYER: Oh, okay.

THE COURT: All right, well then –

MR. MOYER: I thought you meant they were at your desk.

THE COURT: All right, then we'll recess and go in and do that, all right?

MR. CHARLES: Thank you.

MISS DANTOS: Okay.

THE COURT: If you want to go to the girl's room, fine, you have five minutes to get in there, all right.

MR. CHARLES: Can we have 10 minutes Judge, just to go down and get them. I mean, you'll be ready to close at, quarter after, twenty after. We got to just do down –

THE COURT: Well, what are your Points for Charge, are they lengthy?

MISS DANTOS: I'm going to be quick. No.

MR. CHARLES: No.

THE COURT: Do you have Points for Charge?

MR. MOYER: No.

MISS DANTOS: And my argument is not going to be long.

MR. MOYER: The only thing that I want the Court to do, and I assume you're going to do this, is, [36] define torture.

THE COURT: Yeah, yeah.

MR. MOYER: I think the Purcell Case defines that.

THE COURT: All right.

MR. MOYER: Also, I think that under Mills versus Maryland, you have to instruct the Jury that they don't have to be unanimous on the actual individual mitigating factors. They each – each indi – each Juror can have their own mitigating factor but the Jury as a whole has to be unanimous as far as mitigating factors. In other

words, six Jurors could have a mitigating factor, the fact that he's got a son, okay. Six Jurors could have a mitigating factor of something else. They don't have to be unanimous.

THE COURT: Yeah.

MR. MOYER: Now, in those specific mitigating factors, and I think under Mills versus Maryland that you have to – in fact, I have an instruction that, if your Honor please, I can give you that I think is appropriate.

THE COURT: All right. You get it to me, we'll go over that and with their Points for Charge.

MR. CHARLES: Can we come back at 10:30? Would that be too much to ask?

[37] THE COURT: Oh, yeah, because I want to get this over with. Really, I don't know why you need so much time.

MR. MOYER: Yeah, I mean, what's the hold up.

THE COURT: What do you need it for, because I want to get the Points for Charge out. Let's get – give you 10 minutes, quarter after, be in Chambers with your Points for Charge and then we'll go over them, very good.

(Whereupon side-bar conference concludes)

(Whereupon Court is in recess)

COURT CRIER: All rise please, Court is again in session, you may be seated.

THE COURT: All right, you may bring the Jury in, please.

(Whereupon the Jury enters the Courtroom)

THE COURT: Very well, all right, Miss Dantos.

MISS DANTOS: Your Honor, Mr. Moyer, [38] members of the Jury, this is my last opportunity to talk to you, and I'm going to beg you for mercy. This is something that is an awesome responsibility, awesome, for all of us. For you and for me. I put myself into a near panic to try and think of what would be the right words to say to you. What can I say that touch a part of your heart? And worse than that, what if you've already closed your minds to whatever I have to say? I hope you haven't, because you told me you wouldn't. I want you to keep an open mind. What are the right words to say when you're trying to save someone's life? You, as a Jury, you convicted him of First Degree Murder. You convicted him, in your minds, beyond a reasonable doubt, but you must have some doubt. There has got to be some doubt there with no eye witness, with circumstantial evidence, and you saw what that circumstantial evidence showed you. It didn't only point to Ron Rompilla, did it? It pointed somewhere else. So, I know that you have to have some doubt as to what actually happened that night. We may never know what actually happened that night. For months and months and months, I've been worried about this, the possibility that it could become real and the possibility has become a reality here. Life or death, doesn't get any more real than that, and I've been struggling with it. It is a tough case, it's complicated, a lot going on, there's a lot of emotion. [39] Please bear with me, okay, I'm going to try and get through it. I needed some help with this, I needed some help to deal with this and the gravity of the decision that we're all involved in. So, I went to talk to someone, and I talked to the man that married me and my husband, our priest, and I asked him to help me get through it. How can I find some

peace with this? And he told me two simple words, to pray for. We pray for justice and mercy. That's it, justice and mercy. You rendered what you thought was just. I'm begging you to show him mercy. You've seen us, Fred and I, fight for him for two weeks. Fighting, fighting, fighting, everything they brought in we fought, because we believed in it. Not just because we were putting on a show, we believed in it. You found him guilty, that's your verdict. I still say there's room for mercy. What can be pure, what can be cleaner than to have justice and mercy. Don't you want to be sure before you condemn that man to die because don't fool yourselves. A death sentence is death. Death is final, irreversible. No more questions after that. No more questions, you're the sentencing, you're the sentencers. You're going to determine the sentence. You may not be the one that pulls the switch, and you may not have to be there when the electricity wrenches his body apart. You may not have to be there, but you killed him nonetheless by your verdict, [40] by your order of electrocution, and I'm begging you not to do that. I'm begging you to show him mercy. He's better than the person that you found him to be. Show him what compassion is. Show him some mercy. You saw what the Commonwealth wants you to believe of Ron Rompilla. He's an animal. I wanted to show you his family so that you could see that he's more than this act that you have found him to have committed. He's more than that. He's got love, he's got love of his family. He's got his 14 year old son that loves him. God knows what could happen if he's allowed to live. Maybe his son can learn from his mistakes. Maybe he can grow from him, maybe he can get to know his father. I'm not asking you to not punish him. I'm begging you for mercy. Your punishment, you will be punishing him if you give him life. Life is life. He will spend the rest of his life behind bars.

He will not get out. Life is life. I'm not asking you to just let him walk away. I'm just asking you to spare his life, to be better than what you found him to be. I saw you all struggling with this. I saw it Monday night at 10:00 o'clock when we let you go for the evening. You looked tired, you looked nervous, and you looked like you've been struggling. I know that. Well, I'm struggling too, we're all struggling with it. But if you're struggling with it, the fact that you had some doubt, should also stay in your mind, now. If there was [41] any doubt, and I submit to you that there has to be some doubt. There has to be. You don't know what happened. You'll never know exactly what happened. There's got to be some doubt here. What if he dies, and they find out whose hairs those were, what then? It's too late. You heard some horrible things about his priors, about the rape. Horrible things. You heard that he was convicted of rape, and you heard that he was sentenced by the Court to what they thought was just, and he served his sentence, and you are not sentencing him here today, because he committed a rape or, because he was found to have committed a rape. That's not what we're here for. Commonwealth wants you to kill him, because he took another life. They want you to kill, because he killed. That's what your verdict showed, that's what you found. I want you to know that one single mitigating factor can outweigh every aggravating factor. It just takes one, just one. You're to consider what I presented to you, his family, his son. Consider it, they can give you nine aggravating factors and one can outweigh it, one. Justice and mercy, that's what I'm asking for, mercy. The one aggra – the one mitigating factor that I want to talk about now is the right to life. He is a human being. He is not an animal, he's a human being because people that care for him, that love him. We all felt sad and pain when I saw Mrs. Scanlon cry.

This killing of Ron [42] Rompilla will not bring him back, will not, cannot, nothing can, it's done. Now, give him a punishment for that. Right to life. Legislature says you can do it. We're in the Courtroom, have to follow the laws of the Court, Law of the Land. There are higher laws, higher laws that rule us and what do they tell us? They tell us to be compassionate and to show mercy. Excuse me. Members of the Jury, I'm asking you to not subject Ron to the same horrible fate that Mr. Scanlon was subjected to. I'm begging you for that and please, don't let him die. I tell you this from the bottom of my heart, if you order death, it will take a part of your life away. Don't stain your hands and your souls with this man's blood, don't do it, please. If you can't, if you have no mercy in you, if you can't put aside what you heard and what the Commonwealth told you, and you can't listen to the please [sic] from his family, crying out to you to save his life. Not to let him go but to put him jail for the rest of his life. That's what they're asking you. But if you can't find that mercy in your heart, and you come back here, and you look him in the eye, and you tell him that you have ordered his electrocution. You tell him that but what if you're wrong? What if you're wrong? Can you live with that? This is a decision that I hope none of us ever has to be involved in again, but we are. Mark my words, this will affect all of us for the rest of [43] our lives, for the rest of our lives. Don't take a chance that you're going to make a mistake that you can't live with. Don't stain yourself with his blood. I have one quote to tell you "Blessed are the merciful, where they shall obtain mercy." Some point in life, I think we all need some mercy. I'm begging you for it now. I'm begging you for it. This is hard. Earth to death can be final, final. As they count down the days when he's on Death Row, when he's on Death Row, and, therefore, counting down the days and

the hours and the minutes. All I can tell you is, don't do it. Don't do it, please. Don't stain your hands, don't stain your soul of his blood. Don't stain it with an electrocution, a horrible death. Don't stain yourselves of that. I'm telling you, it counts down by days, minutes, seconds, put him in the chair, and you don't have to be there when the bolts of electricity will wrench his body apart. Spare him. Spare him so that he can live for better than what you found him to be. That's all I'm asking you for, is justice and mercy, justice and mercy. You've rendered what you felt was a just verdict. I have no quarrel with you, that was your job, you came back with a verdict but none of you can tell me that you have no doubts and if you have a doubt, then you better think very, very, very, carefully about what you're going to do here. He's a human being. You found that he has killed another. [44] Does that justify taking his life when you've seen what he has, his family, when you've seen them? When you heard them say, no matter what the verdict, I love him. I love him. He's my brother, he's my father, I'll visit him. Put him jail, I'll visit him, I'm there, I'll stand behind him. Yeah, sure, Bobby was upset, because he believes him. He believes him, that's his brother. He's not faulting anyone. He's saying, I can't believe you did this, because he's my brother. Because no matter what he did, not matter what you found, they love him, they love him. His son has just gotten to know him. That's no one's fault. I'm not blaming it on anyone, but I'm asking you to consider it. Consider the fact that this boy, who had to come in here today, because he wanted to, because he wanted to, to have a say in whether or not you kill his father. That's why he came in and that's all he can tell you. I don't know if I missed anything, I don't know. Just tell you this, it's in your hearts to show mercy, and you all told us that you would consider it, that you would

consider a life sentence with that First Degree. Please, don't block your minds out on that. Consider it. It's a heavy, heavy responsibility. I didn't give it to you, the law did. They say you have to decide life or death. I say, decide for life, decide for life. Spare his life. His punishment is going to be behind bars for the [45] rest of his life, it's punishment. Don't take a chance that you may be making a wrong decision that you can't live with. Please, spare his life, thanks.

THE COURT: Mr. Moyer.

MR. MOYER: May it please the Court, Counsel, ladies and gentlemen of the Jury. This is the last time I'm going to speak with you in this case. Again, I want to thank you for the attention that you've shown in this case. It's been obvious from day one, it was obvious from the deliberation, it was obvious in the verdict. I thank you again for the attention that you're going to be giving for this phase of the case. Obviously, this case is not over. This is a very important part of this case. You learned some things you didn't know before, some things that we weren't permitted to tell you in the Trial but now you know those things. I realize that deciding a man's fate is not an easy job to do. It's not easy for me to argue for the death penalty, but I'm not arguing it out of vengeance or malice, I'm arguing it because the facts warrant it in this case. It is the proper thing to do. Each one of you told me on Voir Dire that if the facts warrant it, you could vote to impose the penalty of death. Each one of you individually told me that. And each one of you were picked on this Jury, because you could consider the death penalty, you could vote to impose the death [46] penalty if it was appropriate. Ladies and gentlemen, the death penalty is appropriate in this case. It's not appropriate, because I say

it's appropriate, it's not appropriate because anybody else says it's appropriate. It's appropriate because the facts of the case say it is and the Law, which you took an oath to uphold, says that if the facts warrant it, you can impose it. Each one of you told me you could. The Legislature of Pennsylvania set forth factors, aggravating factors. We can present to you, the Jury, in determining whether or not the death penalty is appropriate. Three of them, we are presenting today, you know what they are. First of all, the factor that the murder was committed during a commission of another felony, that's pretty obvious. By your verdict, you had determined that the Defendant is guilty of this murder. That phase of the case is taken – has been taken care of. The Defendant committed that murder, you have found that beyond a reasonable doubt and that is what the law replies. You've also found that that murder – during that murder, there were two other felonies that were committed. There was the Burglary and the Robbery, and it's very crystal clear from the evidence that those – that that murder was committed during that Burglary and that Robbery. So, just on that factor alone, if you found that that factor exists beyond a reasonable doubt and that it outweighs any mitigating [47] circumstances, on that factor alone, you can sentence this Defendant the death penalty. But the Commonwealth has more and the Commonwealth has shown more. We have the factor of torture. Maria Dantos gave you a very inspired, a very emotional speech and that is her job, there's nothing wrong with that. And what the main touchstone of that speech was mercy, and it's true. The law recognizes that the Jury can impose mercy but ask yourselves this, ladies and gentlemen of Jury. Did Ronald Rompilla show any mercy to Jimmy Scanlon, any mercy whatsoever? I submit to you, he did not. He did not show one bit of mercy on January

14th, 1988. The Judge will instruct you that the term torture, as defined in this case, means the intent to inflict pain, suffering, or pain and suffering. The intent to inflict. You've got to focus in on what that man did to Jimmy Scanlon and what his intent was. Whether it was more than just to kill him. Was it to inflict pain, to make him suffer? You've heard the testimony concerning this injuries. Jimmy Scanlon died a very violent, savaged, brutal death. Defensive wounds probably took place first, stabs, bruises, lacerations on the hands. You then have lacerations of the face. They practically cover Jimmy Scanlon's face. They are on the left cheek, the chin, the right cheek, the forehead. Dr. Mihalakis told you that it is very likely and to a reason medi – excuse me, to a [48] reasonable degree of medical certainty, that those injuries came first. I submit to you, ladies and gentlemen of the Jury, Jimmy Scanlon knew he was going to die that morning. He knew that he was up against a very strong individual, very violent individual, and he knew he was going to die, and he was in incredible pain just from those injuries alone. The defensive wounds on the hands and the lacerations from the bottles. Glass cutting his face. Those injuries, in it of itself, caused tremendous pain and suffering. The Defendant wasn't – he wasn't satisfied with that. At some point, he fractures his nose, fractures Jimmy Scanlon's nose. He smashes a bottle over his – the back of his head, splitting open the scalp. You heard the testimony from Dr. Mihalakis. Then I submit to you, the Defendant grabbed the knife, you saw the knife, it was taken back into the Jury Room with you, and began stabbing Jimmy Scanlon. Stabbed him once, twice, three times. At some point, the tip of the blade breaks off. He still doesn't stop. He still continues to stab after the tip of the blade has broken off. Continually stabbing the back of the skull, the neck, 16

times, ladies and gentlemen,–16 times he stabs him. Some of those 16 stab wounds are with the blade broken off. Eventually, that blade breaks. Defendant still not satisfied. He gets another knife, he gets the butcher knife. Walks into the kitchen to get the [49] butcher knife and stabs Jimmy Scanlon three more times. Did he show Jimmy Scanlon any mercy, any mercy whatsoever? I submit to you, he didn't. There was some testimony from Dr. Mihalakis as to whether or not Jimmy Scanlon was conscious for any of these wounds. I only hope that Jimmy Scanlon wasn't conscious. I hope that he didn't know all the pain that it was the intent to inflict in this case. I pray that Jimmy Scanlon did not feel those 16 stab wounds to the back of his skull and the neck. I pray that he didn't feel these three stab wounds in the middle of the back. Ladies and gentlemen of the Jury, Dr. Mihalakis couldn't tell you whether he was alive or whether he was conscious at those – at that point. He could tell you he was alive, he couldn't tell you whether he was conscious. I submit to you that at some point, some of these wounds, Jimmy Scanlon was conscious, and he felt the pain. He felt that tremendous pain that comes with having your head split open, with having your nose fractured, and it's true that those burns, Jimmy Scanlon wasn't alive. You know what, he didn't know that. He didn't know whether he was alive or not. He didn't know whether he was conscious or not. It was his intent to cause substantial pain and suffering and that's the legal definition of torture. That wasn't just a killing, that was overkill. No one deserves to die, ladies and gentlemen, especially, like that. Not – not that [50] way. That's not mercy, and I'm only asking you to show the same mercy to him that he showed to Jimmy Scanlon because the statement's true, it's going to put him to death if you find the death penalty is appropriate, but they're not

going to do it this way. They're not going to do it with 16 stab wounds to the head, fractured nose, piercing the left ventricle with a butcher knife. Commonwealth has more. Commonwealth submits to you that the Defendant has a significant history of felony convictions involving violence to the per – to the person or the threat of violence to the person. You heard the testimony, that in 1974, the Defendant was convicted of the crime of Rape and Burglary, and you heard some of the testimony of that case, and I don't think you can really grasp the feeling of a victim testifying from the mere printed word. I think you got a little bit of the feeling. Joe Macrenna, the woman that was raped, was raped pretty brutally. She was raped at knife point. She was a pretty plucky woman in a lot of respects and fortunately, that crime didn't result in any further damage to her than what you heard. But isn't it frightening, the similarity between that case and this case. I mean, it is absolutely astounding. Both take place around the bar. The Defendant gets in after closing or right before closing. A knife is used. On both occasions, a knife was used. Steals money both times. [51] Isn't it frightening the similarities in those crimes. Takes a taxi away from Joe's Bar, takes a taxi the night of this crime. He slashes Joe in the breast with a knife. He uses a knife on Jimmy Scanlon. It's absolutely frightening to think of the similarities in those two crimes. But there is one difference, one major difference, Joe Macrenna lived through her experience. Jimmy Scanlon didn't. And you know, I've been involved in this case for about eight months, 8, 9 months. I keep wondering, why did the Defendant wait till Jimmy Scanlon left the Bar? He knew he was closing up. Why didn't he just wait until he had left to break in and steal the money, no problem, nobody gets hurt? You have to ask yourselves, why didn't he wait for Jimmy Scanlon to leave? Was it his

intent to kill right from the start? Was it his intent to do serious bodily injury right from the start? Because if he had waited maybe a half hour, an hour later, Jimmy Scanlon would have been gone. This wouldn't be a homicide case. Jimmy Scanlon would still be living. I think the Defendant learned a lesson from Joe Macrenna in that case, that Rape case. That lesson was, don't leave any witnesses. Don't leave anybody behind that can testify against you. Don't leave any eye witnesses that he's banking on, we don't have and so, that you can't convict him. Unfortunately, you rejected that, and I'm asking you to reject it as far as [52] the penalty phase goes as well because that's what he's banking on. That you cannot return a death sentence because there's no eye witnesses. Well, he's the one that made sure there were no eye witnesses, ladies and gentlemen. He's the one that savagely, brutally, killed Jimmy Scanlon, to make sure there's no eye witnesses. You know, in our system of justice, there's a lot of emphasis on the rights of Defendants and that's the way it should be, I'm not suggesting otherwise. Fortunately, we live in a great country as we do. We don't live in the Soviet Union or Iran or Libya. We get trials, we get rights and that's great, that's wonderful and a defendant should have those rights. What about the rights of the victims? You know, unfortunately, Mrs. Scanlon is not permitted to come up onto the stand to tell you how she feels about losing her husband. Tim Scanlon can't tell you how he feels about losing his father. There's no question that Mr. Rompilla, the Defendant's family is upset, and they feel sympathy for the Scanlons'. I'm not questioning that. We've only heard from the family's feelings, we haven't heard from the Scanlons', and we're not permitted to put on evidence about how they feel about losing their father, about losing their husband. Jimmy Scanlon had no

trial, ladies and gentlemen. Jimmy Scanlon didn't have people defending him. Jimmy Scanlon couldn't have his sisters, his brother, [53] his sister-in-law, get up on the stand and tell you what a wonderful person he is. He doesn't have that right. Jimmy Scanlon didn't have the right to have Tim get up there and tell you how much he misses his father. The only thing Tim Scanlon had was the right to tell you the way he found his father the morning of January 14th, 1988, lying in a pool of blood, alcohol covered, savagely, brutally, beaten and killed. That's all Tim Scanlon could do. He can't tell you how much he misses his father. And the reason for that, ladies and gentlemen, because this Defendant, he was the Judge, he was the Jury, and he was the Executioner. Now, there's an image of justice a part of law I'm familiar with. It's a Statue of a woman, she's got a blind pulled on, she's got the scales of justice. She's weighing the evidence. That's the personification of our system of justice. There's one other thing a lot of people forget about. In the other hand, there's a sword and on certain cases, the sword has to be used. You don't want to, you don't like to but some cases you do. Ladies and gentlemen, if you don't do it in this case, when are you going to do it? This is the most appropriate case for the death penalty and that's all I'm asking for, thank you.

THE COURT: Very good. Ladies and gentlemen, before you retire to the Jury Room to make your final deliberation in this matter, the Court will present a [54] Charge to you with respect to your duties in this matter. It will not be very long and as I indicated, very shortly, you're going to be excused to decide whether or not the Defendant is to be sentenced to death or life imprisonment. The

sentence will depend upon your findings concerning aggravating and mitigating circumstances. The Crimes Code provides that the verdict must be a sentence of death if the Jury unanimously finds at least one aggravating circumstance and no mitigating circumstance or if the Jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstances. The verdict must be a sentence of life imprison – imprisonment in all other cases. The Crimes Code defines aggravating and mitigating circumstances and for the purpose of this case, the Commonwealth advances and only the following matters may be considered by you, if proven, can constitute aggravating circumstances. One, that the Defendant committed a killing while in the perpetration of a felony. In this regard, of course, you're going to have to go to the evidence that was presented in the case in chief. In making that determination, however, you should consider that committing a killing, while in the perpetration of a felony, requires a person to commit the killing while performing or attempting to carry out the felony. A person cannot be perpetrating or attempting to [55] carry out a felony unless, at the time of the killing, he has formed the intent to commit a felony. And a killing cannot be in the course of perpetrating or attempting to perpetrate a felony if the accused forms the intent to commit the feloy only after the killing. The second aggravated circumstance advanced by the Commonwealth was that the a – the offense was committed by means of torture. The word "torture" is generally understood as the infliction of a considerable amount of pain and suffering on a victim which is unnecessarily [heinous], atrocious or cruel, manifesting exceptional depravity. There must of necessity be more than a mere intent to kill to be an aggravating circumstance, the law requires an intent to cause pain and

suffering in addition to the intent to kill. There must be an indication that the killing is not – the killer is not satisfied with the killing alone. And the third aggravating circumstance appointed to, by the Commonwealth, is that the – Defendant has a significance [sic] history of felony convictions involving the use or threat of violence to the person. And in this regard, a significant history of prior criminal convictions involving the use or threat of violence to the person means one – more than one prior conviction. In other words, at least two prior convictions before that can become an aggravating circumstance. For the purposes of this case, the following [56] matters, if proven, can constitute mitigating circumstances. Any mitigating matter concerning the character or record of the Defendant or the circumstances of his offense. The Commonwealth has the burden of proving aggravating circumstances beyond a reasonable doubt. Reasonable doubt, in this context, is the same as that was – that which was charged to you in the case in chief but let me repeat. A Reasonable Doubt is such a doubt as would cause a reasonably careful and sensible person to hesitate before acting upon a matter of the highest importance to himself or herself. To be reasonable, a doubt must be one which fairly strikes a conscientious mind and clouds the judgment. It is not such a doubt that is fancied or imagined. It is not such a doubt as one might conjure up out of nowhere simply to avoid the consequences of returning an unpleasant decision or verdict. As the term itself implies, it is a doubt which is reasonable and which fairly arises from the evidence or the lack of evidence. If you have any such doubt as to any material part of the Commonwealth's position with regard to aggravating circumstances, it is your duty, as a Jury, to resolve that doubt in favor of finding against such an aggravating circumstance. The Defendant, however, has

the burden of proving mitigating circumstances but only by a preponderance of the evidence. This is a lesser burden of [57] proof than beyond a reasonable doubt. A preponderance of the evidence exists where one side is more believable than the other side. To put it in another way, and I think I did this, and I adduced to this method before, think, if you will, of an ordinary balancing scale with a pan on each side. Onto one side of the scale, you should place all the evidence favorable to the Defendant's position with regard to a mitigating circumstance and onto the other side of the scale, place all the evidence favorable to not finding such a mitigating circumstance and if after considering the comparable weight of the evidence in this regard, you feel that the scales tip ever so slightly or to the slightest degree in favor of the Defendant's position of a mitigating circumstance, you should then, of course, find such a mitigating circumstance. However, if the scales do remain the same and do not tip in his favor or for that matter, should tip against finding such a mitigating circumstance, then, of course, you should not find such a mitigating circumstance. As you know, we have been talking throughout the course of this – these charges. The requirement of unanimity that all of you must agree to a finding. This is true, and it will be true with the ultimate decision that you must reach, in this regard, with respect to the sentence. However, in viewing the mitigating circumstances and the burden that the Commonweal – that the Defendant [58] has by a preponderance of the evidence, you need not make such a finding by unanimi – unanimous thought in deciding if any particular mitigating circumstance has been proven. If one or more of you find one or more mitigating factors have been proven to your satisfaction by a preponderance of the evidence, you may individually consider such factor or factors in reaching a

unanimous verdict. By that I mean, if three of you should find a mitigating factor, so be it. It is a mitigating factor and if three others should find another mitigating factor, to which the original three didn't agree to, but nevertheless, those three find another mitigating factor, and you go on down the line with respect to each mitigating factor. It does not require all of you to agree as to each mitigating factor. However, when you ultimately decide the matter as to whether or not the aggravating circumstances outweigh the mitigating circumstances or the reverse, if the mitigating circumstances outweigh the aggravating circumstances, then, of course, it will require unanimity of thought. You may then consider the different positions which each of you may have taken with regard to the mitigating circumstance. You should keep in mind, again, that the burden of proving the aggravating circumstances remains with the Commonwealth, and it must do so beyond a reasonable doubt and, again, it never shifts in that regard. All the evidence from both [59] sides including the evidence you heard earlier during the trial in chief as to aggravating or mitigating circumstances are important and proper for you to consider. Your decision should not be out of any feelings of vengeance or prejudice towards this Defendant. And, again, if you recall, the Defendant did not take the stand in this Sentencing Hearing, you must dra – not draw any adverse inference from the fact that he did not take the stand. The same principals [sic] of law apply with regard to that aspect that we outlined to you with regard to the Defendant's requirement to take the stand. The mere fact that he did not take the stand, you cannot draw any adverse inference from that fact alone or from that fact at all. Ladies and gentlemen of the Jury, the verdict is for you to decide. You should remember and consider all the evidence giving it the weight to which it is

entitled. You should remember that you are not merely recommending a punishment. The verdict you return will actually fix the punishment of death or life imprisonment. Remember, again, that your verdict must be unanimous. It cannot be reached by a majority vote or by any percentage. It must be the verdict of each and everyone of you. Remember that your verdict must be a sentence of death if you unanimously find at least one aggravating circumstance and no mitigating circumstance or if you unanimously find one or more [60] aggravating circumstances which outweigh any mitigating circumstances. In all other cases, your verdict must be a sentence of life imprisonment. Going out with you, will be a Verdict Slip upon which you will record your verdict and findings. The Verdict Slip, of course, is composed of, in four pages, yes, and is self-explanatory. You are requested to read through the entire Verdict Slip before beginning the deliberation. This is outlined on the Verdict Slip. It also outlines the fact that aggravating and mitigating circumstances presented to the Jury the following aggravating circumstances are submitted to the Jury and must be proved by the Commonwealth beyond a reasonable doubt as the Court has already charged. The three positions of the Commonwealth are outlined. The Defendant committed the killing while in the perpetration of a felony. Two, the offense was committed by means of torture. And three, the Defendant has a significant history of felony convictions involving the use or threat of violence to the person. The following mitigating circumstances is submitted to the Jury and must be proved by the Defendant by a Preponderance of the Evidence. Any other evidence of mitigating – of mitigation concerning the character and record of the Defendant and the circumstances of his offense. We ask that you do not complete the Sentencing Verdict Slip until

your [61] deliberations are concluded and the Verdict Slip, of course, is to be used only for one purpose and that is to record your sentencing verdict and the findings upon which it is based. After you have given sufficient deliberation, and you cannot unanimously reach a sentencing verdict, do not complete or sign this slip but return to the Court and report this fact to the Court. The Court will then decide and determine if further deliberations are required. If the Court should reach to the conclusion that they are not required and would serve no useful purpose, the Court would then sentence the Defendant to life imprisonment. If you have reached a unanimous verdict, you should complete the next Roman Numeral 2, and the sentence reads, "We, the Jury, unanimously sentence the Defendant to" and there's two choices you have. One, is death, the other is life imprisonment. You should check if whatever your unanimous verdict would be, your decision. If you find that death and recommend or rather find a death sentence would be appropriate, you go onto the next page, and it reads – tells you to do this, there's no problems with this, you'll have no difficulty following it. The findings in which the sentence of death is based are and then here you have one, at least one aggravating circumstance and no mitigating circumstance. And then we ask that you and direct that you do, if you find such an aggravating circumstance, the [62] aggravating circumstance or stances – circumstances unanimously found are, outline then whatever they may be. Two, one or more aggravating circumstance which outweighs any mitigating circumstance. And, again, if you so – should so find that one, the aggravating circumstances that you unanimously find, you should outline them whatever they may be. And also, the mitigating circumstances that you considered under those circumstances. And finally, if you find that life sentence is

appropriate sentence, and it is your unanimous decision in that regard, if you would then, fill out Paragraph C in which you then find there are no aggravating circumstance exists and the mitigating circumstances are outweighed by the aggravating cir – are not ag – outweighed. In other words, if the mitigating circumstances that you find are not outweighed by the aggravating circumstance and then we ask that you list, if you would, the mitigating circumstances that you find as well as the aggravating circumstance. Hopefully, in completing this Verdict Slip, it will be made easier for you as to what your responsibilities are. And as I said, and I referred to it, and it's outlined in the Verdict Slip, if after conscientious and thorough deliberation, you aren't able to agree on your findings and verdict, you should report back to the Court with this fact. You need not complete out – complete this form.

[63] JUROR: Can you repeat that, your Honor?

THE COURT: I said if after conscientious and thorough deliberations you are unable to agree on your findings and verdict, in other words, you just can't unanimously agree as to whether it should be death or life, you should not again, fill out this Verdict Slip. You should come back and report that fact to the Court. And, again, if the Court should, and I indicated before, reaches the opinion that further deliberations would not result in a unanimous agreement on the sentence, it will be the Court's responsibility then and duty to sentence the Defendant to life imprisonment. All right?

JUROR: (Nods affirmative).

THE COURT: Now, one in conclusion, the Defendant has submitted to the Court Points for Charge and as I indicated initially, the points if read and if they

accurately outline the Law, we will read them to you, and you should consider them as such in your deliberations here on – in the Sentencing Hearing. Binding instructions, the one is denied. Points for Charge; 1, 2, 3 are all – were all adequately covered by the Court. 4, 5, 6, as well as 7 were all covered and 8, the Court will read and affirms. There has been evidence presented related to the following mitigating circumstances: The Defendant, in this case, wants you to review these matters with respect to your [64] duties as to the mitigating circumstances that will be before you for your consideration. A. The time it took to deliberate, by you, the Jury, on the question of guilt or innocence. B is denied. C. The fact that the Defendant has a family and specifically, the relationship of the Defendant to; 1, his son, Aaron Rompilla. 2, his sister, Sandra Whitby. 3, his brother, Nicholas Rompilla. 4, his sister-in-law, Darlene Rompilla and 5, his brother, Robert Rompilla. And 9, although, the Court, I think referred to it in its basic Charge, we will approve and repeat. You should not consider retribution or revenge in your determination of sentencing. Ladies and gentlemen, the Law is quite clear, it is for you to make the decision as to the sentence that is to be imposed under these circumstances. That decision, of course, is of great concern to both the Commonwealth as well as the Defendant. The Court, therefore, instructs that you, of course, and I'm sure you will, give appropriate consideration to all that has been presented to you for your consideration in this regard and hopefully, then, after an appropriate discussion amongst you, you will reach an appropriate decision in this regard. All right, is there anything further?

MR. CHARLES: May we approach, please?

THE COURT: All right.

[65] (Whereupon Counsel approach side-bar)

MR. CHARLES: Judge, on that Verdict Slip, I'll likely consider on the – where is the Verdict – okay. I think that they should be told that – they should be told that the fact that there's only one that – Number 8, is there, that that one – there's three set out on the aggravating and one on the mitigating but that that one that they find can outweigh the other three.

THE COURT: Oh, all right.

MR. CHARLES: Okay. Now, you've gone through what the mitigating ones are as far as the relationship with the family and specified them, and it might be easier with your example on the unanimity, if, you know, you were to show – pick, like, one –

MR. MOYER: I object to that. I think it's clear on –

MR. CHARLES: I think that would confuse me.

MR. MOYER: – the unanimity. I object to specifying any particular mitigating factors at this point.

MR. CHARLES: I'm not saying specifying, Judge. I'm saying if you took – three can take Number 1 and three can take Number 2 and three can take Number 3 and even though all of them don't agree on the three, there's [66] three factors.

MR. MOYER: He said that, that's exactly what he said.

MR. CHARLES: I know but that was be –

MR. MOYER: Well, if he said it –

MR. CHARLES: He said it in a – let me finish. He said it before he went through the specific instances. I don't think it was as clear. Also, they should know that the one – the one catch all mitigating factor can outweigh the other three aggravating just because it's three and one. One can outweigh the three.

MR. MOYER: I have no objection to you saying that the mere number, in it [sic] of itself, doesn't – it's got to be – I have not objection to that.

MR. CHARLES: I mean that's – it confused me in the beginning.

MR. MOYER: I don't think that's objective, it was very clear.

MR. CHARLES: I think – I don't think so. I just – what's it going to hurt to go over it?

MR. MOYER: Well, then why not just do the whole charge over again.

MR. CHARLES: No, you don't have to do the whole Charge over again. What's it going to do –

MR. MOYER: Because you're drawing undue [67] retention –

MR. CHARLES: – that area –

MR. MOYER: – to the mitigating circumstances.

MR. CHARLES: I am not. That is something that's a confusing slip, Judge. I believe that slip is confusing. I just want that brought out.

THE COURT: Well, we can straighten that out that you've asked about it, but you're asking to emphasize something.

MR. CHARLES: No, I'm not asking you to emphasize anything. Just the fact that the one – the fact that there's one delegated mitigating factor and three delegated aggravating factors, doesn't mean three outweighs one, one can outweigh the three in total. I don't think that was covered on the slip.

MR. MOYER: That I don't have any objection to, I said that, but I object to is the thing about the unanimity. That was clear, I don't think the Jury's going to – they're an intelligent Jury.

MR. CHARLES: I know it's an intelligent Jury, but I don't think it was clear, Judge, I don't.

(Whereupon side-bar conference concludes)

[68] THE COURT: Now, ladies and gentlemen, the Court's been requested to make a point with respect to this Verdict Slip that will be going out with you. It should be noted, of course, as I indicated, the Commonwealth points to three specific aggravating circumstances which it is required by a – to meet the burden of proven beyond a reasonable doubt as to all three and the mitigating circumstances refer to is only one, and it is an all encompassing one, though, any other evidence of mitigation concerning the character and record of the Defendant and the circumstances of his offense. It should be kept in mind that like, and I think I can compare it to what was said in the Charge in case in chief with respect to witnesses. The mere fact that only one is asserted, it should be viewed in the context of all that was presented even though it may

represent only one and that one could very well outweigh all that the Commonwealth has established to your satisfaction whatever it may be, and you should not, therefore, say well, there were three here but only one here. It depends on the weight that you place upon that one, whatever it may be and again, as I said, the comparison would be to witnesses. You often times say, that you can't compare and weigh everything by the number of witnesses by one side or the other. The reason for that is because, obviously, that one witness, the testimony of [69] that one witness weigh – far outweigh that of 10 or 20 witnesses. If you, as a Jury, should so conclude and the same thing can be said with respect to the position here as to mitigating circumstances. I think that sufficiently covers it then, all right.

FOREMAN: One thing, you Honor, if I have any – if we have any questions on clarification, I still have the right to address it.

THE COURT: You may come back into Court any time, but we ask that you put it in writing whatever it is, okay?

FOREMAN: Right.

THE COURT: And then we'll address any question that you might have. Very good, all right. It is almost time, I think they probably already scheduled lunch. So, I think under the circumstances, you'll be taken over for lunch first, all right. All right, Mr. Schaeffer. Oh, wait a minute now, they better be sworn as, again, as to this – this is a special hearing on – you better swear in the Tipstaffs with respect to – same as you did with respect to the verdict because this is another aspect, it only has to do with the Sentencing Hearing.

(Whereupon Tipstaffs are sworn)

[70] THE COURT: All right, Mr. Schaeffer, we will adjourn then until 1:30.

COURT CRIER: All rise please, this Court will adjourn until 1:30 this afternoon.

(Whereupon Court is adjourned until 1:30)

COURT CRIER: All rise please, this Court is again in session, you may be seated.

MR. CHARLES: Michael, can we approach? Can we approach, Judge?

(Whereupon Counsel approach side-bar)

MR. CHARLES: Just –

THE COURT: Is it on?

MR. CHARLES: Is it on?

COURT MONITOR: Yeah.

THE COURT: It's on.

MR. MOYER: Are we on?

THE COURT: It's on.

MR. CHARLES: Is there any way that we can have you – to you answer that, advise them as the Charges just to pay attention to the Charges. In other words, they may not know that he faces possibility of consecutive [71] sentences either.

THE COURT: Well, maybe they don't know.

MR. MOYER: No, I object to that.

THE COURT: That's not before me, that's the answer.

MR. CHARLES: You know what, I think it's a misconception the Jury's had.

THE COURT: It may be, but I – that's their question, and I have to answer the question.

MR. MOYER: Fred, there's no evidence in this case or in the Sentencing Hearing that he was technically on Parole. I mean, there's no direct evidence on that.

MR. CHARLES: I'm not talking about that, but I think people think –

MR. MOYER: Consecutive sentence of what?

MR. CHARLES: He has a Burglary and the Robbery.

MISS DANTOS: The Burglary and the Robbery.

MR. MOYER: But they don't have to be consecutive.

MR. CHARLES: They don't have to, but they can be, it's a possibility. But I'm saying –

MR. MOYER: No, I object.

MR. CHARLES: Judge, the –

[72] THE COURT: I'm not going to, I'm sorry.

MR. CHARLES: – problem, is the misconce – okay. Because of the misconceptions, a lot of people think that if you go get a life sentence, you're out in five (5) years or three (3) years.

MR. MOYER: I don't think too many people think that.

MR. CHARLES: Well, –

THE COURT: I can't stop that.

MISS DANTOS: They – they have –

THE COURT: That's not before me. It's not before me, it wasn't brought up, you're right. They would have to confine themselves to what was brought out –

MR. CHARLES: Okay.

THE COURT: – in the Sentence Hearing from the Charge.

MR. CHARLES: Okay.

MISS DANTOS: That's it.

THE COURT: That's all.

MR. CHARLES: But I mean if it – it may get to another question at that point we may have to do with it then.

MR. MOYER: Well, then we'll have to deal with it.

THE COURT: And I'll deal with it, all [73] right.

(Whereupon side-bar conference concludes)

THE COURT: You may bring the Jury in please.

(Whereupon the Jury enters the Courtroom)

THE COURT: Let the record reflect, the Jury have a question of the Court that the Jury was brought in

at 2:15 p.m. That present were the Defendant, his Counsel, as well as the Assistant District Attorney. Now, ladies and gentlemen, I understand, my Tipstaff has handed a note and a question that was posed, I assume, you want answered and this is what it says. "If a life sentence is imposed, is there any possibility of the Defendant ever being paroled?" Is that your question?

FOREMAN: Correct.

THE COURT: I'm sorry to say, I can't answer that question. That's not before you as such. The only matter that you can consider in the Sentencing Hearing is the evidence that was brought out in the course of the Hearing and the Law with respect to the Court's Charge. That's the only consideration you have, I'm sorry to say. [74] I – if there were other alternatives that you should consider, we would have outlined them in the Charge, all right. Are there any other questions?

FOREMAN: None right now.

THE COURT: Very good. The Jury's excused to return to continue with the deliberation.

MR. CHARLES: Your Honor, may we approach, please? May we approach?

(Whereupon Counsel approach side-bar)

MR. CHARLES: Are you going to outline the only alternative is life imprisonment at that? Are you going –

MR. MOYER: They know what they –

THE COURT: Yeah, come on. Fred, please, they're not –

MR. CHARLES: No, but I'm telling you, –

MR. MOYER: My god, Fred.

MR. CHARLES: – this – that kind of a question, that kind of a question, I think –

THE COURT: That's all they have.

MR. CHARLES: Oh, okay.

THE COURT: Now, do you know something else that they have an alternative on, I'd like to hear it, but [75] I don't know what it would be?

MISS DANTOS: No.

MR. CHARLES: Okay, you're right. Okay.

THE COURT: Okay.

(Whereupon side-bar conference concludes)

THE COURT: All right, you're excused, thank you very much.

(Whereupon the Jury leaves the Courtroom)

THE COURT: All right, let the record reflect that at 2:17, the Jury was excused to continue with their deliberation. All right, we will adjourn then, Mr. Schaeffer, until further notice.

COURT CRIER: All rise please –

MR. MOYER: Judge, are you going to inform the Sheriffs of –

THE COURT: Oh, yes, Mr. Barrett, could I see you a second up here. I expressed concern to Counsel that, you know, there may be a series of these questions. Do

they have to take him back to the prison? I think that they shouldn't. Can't they keep him downstairs until 5:00 o'clock?

[76] MR. BARRETT: Until 5:00 o'clock, okay.

THE COURT: Okay, do that. I think it would – because it – it takes quite awhile till they bring him over and everything. All right. All right, Mr. Schaeffer, we will adjourn then until further notice.

COURT CRIER: Court will be adjourned until further notice.

(Whereupon Court is adjourned until further notice)

COURT CRIER: All rise please, this Court is again in session, you may be seated.

THE COURT: All right, let the record reflect, the Court is bringing the Jury in to ask a question as to preparing for dinner depending how they respond to the question. You may bring the Jury in please and at the time, at 5:20, the present were the Defendant, his Counsel, as well as the Prosecutor and the Assistant District Attorney.

(Whereupon the Jury enters the Courtroom)

THE COURT: Now, ladies and gentlemen, as you know as is our procedure with respect to dinner, we have to make preparations for that, and it being about [77] 5:30. The only concern I have is, and I would like to pose to you whether or not you anticipate reaching a verdict, if at all, I'm not interested in how or why where you are with this. But by 6:00 o'clock, so that if not, we then can prepare for dinner?

FOREMAN: No.

THE COURT: You won't, all right. That's all I needed. Thank you very much. You may take the Jury back please.

(Whereupon the Jury leaves the Courtroom)

THE COURT: All right, then, we will adjourn until further notice.

MR. CHARLES: Your Honor, I would like to put something on the record please. May we approach?

THE COURT: Yeah, put it on the record right where you are. Why come up here? They're not here.

MR. CHARLES: Your Honor, I prefer to put it on the record at side-bar, please.

THE COURT: At side-bar, all right.

MISS HAAS: Excuse me, Judge, can you wait a couple minutes. They want to write a question down for you.

THE COURT: Oh.

[78] MISS HAAS: Okay.

THE COURT: All right. Meanwhile –

(Whereupon Counsel approach side-bar)

MR. CHARLES: Meanwhile, it's 5:20, the Jury looks to me haggard, and I'm requesting that you direct the sentence of life that you take it our of their hands at this point?

THE COURT: Too premature at this juncture, denied.

MR. CHARLES: Secondly, if they're going to be allowed to roam the halls, then I would ask your Honor to clear the halls of everybody else including –

THE COURT: I didn't know they were.

MR. CHARLES: They were out in the hallway.

MISS DANTOS: Yeah, they were.

MR. CHARLES: Outside, and I – and since –

THE COURT: Well, then it should be cleared. I didn't know that –

MR. CHARLES: Yeah, I don't care if they do that I don't want them to know that I'm trying to preclude that so, that they're angry at me, but I think that the victim's family is on one end of the 5th floor, and I [79] believe 7 or 8 Jurors are out pacing at the other end of the 5th floor.

THE COURT: Well, okay, you're right. I don't – I didn't know they were going out there but no way should anybody be near them, but I'm not quite sure just, because they're up here and not down here. It's –

MISS DANTOS: No, it's just not a good appearance.

THE COURT: Well, I agree.

MR. CHARLES: But what I don't understand, your Honor, is –

THE COURT: Have you ever been in one of those jury rooms?

MR. CHARLES: What I observed at 5:15 –

MISS DANTOS: Yeah.

MR. CHARLES: – was like 6 Jurors just on the – out looking out the window, walking up in the hall, and I guess the rest in the Jury Room. I don't know what kind of a deliberation that could be, but it appears 6 or 7 are looking out the window and talking in the hallway while the other ones are in the Jury Room. I don't know – well, I don't know what kind of deliberation that is if they're just –

THE COURT: Well, then let's find out from Mrs. Haas.

[80] MISS DANTOS: Let's get the question.

THE COURT: Mrs. Haas? Question was posed, the Jury is out in the hall. Now, there's concern for that reason. I understand people are out in the hall when they shouldn't be. How much of that goes on out there? The reason I say that is just how much deliberation can be going on.

MR. MOYER: I don't think the Jury should be in the hall regardless.

THE COURT: Right, I agree.

MISS HAAS: They asked me for a break because it's so stuffy. They say, could they just stretch their legs for a couple minutes.

THE COURT: Oh, that's all then.

MISS HAAS: And that's all they did.

MR. MOYER: Who decided that?

THE COURT: Pardon?

MR. MOYER: Who made the decision to allow them into the hall?

THE COURT: Who made that decision to go out in the hall? Originally, it was in the Jury Room.

MISS HAAS: Originally, they were in here, and they said it's just as stuffy in here. We checked the hallway, we checked Judge Backenstoe, everything was empty. I told them they may only walk out there as far as [81] the coat rack and back and there was nobody in sight but Charlie and I.

THE COURT: No one else.

MISS HAAS: Nobody else.

THE COURT: Well, I understand there were other people down here. Nobody else was –

MISS HAAS: If they were, I was up here. I was concerned with up here. I was watching them. There was a lady up here when I went out with nobody else but me, and I said to her, she has to go down to the other end of the hall, and I never saw her after that.

THE COURT: All right. Well, I think –

MISS HAAS: Well, when they went out, there was nobody in the hall but me.

THE COURT: All right.

MR. MOYER: Judge, I think from now, any more deviations from the Jury being in the Jury Room should be cleared with Counsel first.

THE COURT: Well, not Counsel, Court.

MISS HAAS: Judge –

MISS DANTOS: Judge, there's the question.

THE COURT: Counsel won't control this. Now, henceforth, we do not want the Jury taken from the Jury Room. Oh, here's the question, "is it necessary to reach a decision today?" Is it nec – no. I have to say [82] no, it's not necessary. All right, bring them back in.

MISS DANTOS: What if they can't make a decision?

THE COURT: All right, you may be seated.

(Whereupon side-bar conference concludes)

(Whereupon the Jury enters the Courtroom)

THE COURT: Now, ladies and gentlemen, a note has been handed to me that you have a question, and I'll read it. "Is it necessary to reach a decision today?" Is that the question?

FOREMAN: Yes, there's – that was the original intent of us being called together the first time. It was just like an oversight, your Honor. That's what we wanted to know.

THE COURT: Well, the answer to the question is no. The question, we'll have to face it later in the Trial as to how long we go but at the moment, the answer is no, all right?

FOREMAN: Okay, fine.

THE COURT: Very good. All right.

FOREMAN: One more question, your Honor. Then the options will be up to us to decide if we ever come [83] to a point we can't reach a decision, and we can call that?

THE COURT: Well, eventually, if that be the case, and you all should agree and, of course, as we indicated in the Charge to you, when you reach that point, then you're instructed to come into Court and so inform the Court, all right. All right, thank you very much.

(Whereupon the Jury leaves the Courtroom)

THE COURT: Mr. Schae –

MR. CHARLES: Your Honor, I renew my Motion, your Honor.

THE COURT: Pardon?

MR. CHARLES: I renew my Motion again after seeing them and hearing the question, I renew my Motion.

THE COURT: All right, again, denied. Now, Mrs. Haas, for the record, when the Jury was in the hall, under your control, I assume, some other – a Sheriff was with you?

MISS HAAS: No.

THE COURT: No Sheriff. Was anyone with you?

MISS HAAS: Just Charlie.

THE COURT: All right. You and he were sworn to keep –

[84] MISS HAAS: Right.

THE COURT: – the Jury together. Did anyone talk to the Jury or have access to the Jury except you two?

MISS HAAS: No, there was nobody around.

THE COURT: All right. Let the record reflect that the Court finds that there was no tampering or in any way interfering with this Jury by anyone and that in each instance when the Jury is moved anywhere, they're constantly, when they go over to the Hotel to eat or otherwise, same situation occurs. It's just a question of keeping them separate from other people. So, the Court finds that there was no – nothing in error or wrong with what has happened. It's only out of consideration to the Jury, them being cramped up –

MISS HAAS: Right.

THE COURT: – for five, six hours in one little room. All right. But I think the better part about it would be that henceforth, we do not do it anymore, all right.

MISS HAAS: There was – there was a cleaning man out here, and I said to him, do you want to go through, I'll go with you to go through, and he said no, he said, I won't bother.

THE COURT: As long as no one talked to [85] them.

MISS HAAS: Nobody talked to them.

THE COURT: All right, that's the important thing.

MISS HAAS: And they were only out there for about five minutes, maybe 10 minutes at the most.

THE COURT: All right. All right, we will adjourn then, and I would like to see Mrs. Haas, we're going to have to decide where we're going to – about feeding the Jury, all right.

COURT CRIER: All rise please, this Court will be adjourned until further notice.

(Whereupon Court is adjourned until further notice)

COURT CRIER: All rise please, this Court is again in session, you may be seated.

MR. CHARLES: Your Honor, may I approach the bench, your Honor.

THE COURT: Please.

(Whereupon Counsel approach side-bar)

MR. CHARLES: Your Honor, it is now 9:00 o'clock p.m. The Jury was sent out a little bit before [86] 12. I realize they've had supper.

THE COURT: No, it was 12:00 o'clock.

MR. MOYER: And lunch.

MR. CHARLES: At 12 and lunch.

THE COURT: Exactly.

MR. CHARLES: Okay. It's now 9:00 o'clock. I understand the conditions in that room where they're deliberating are extremely warm. It's – I believe getting to the point where this verdict is going to be one from

oppression more so than anything else, and I move that you direct a verdict for a life sentence at this point.

MR. MOYER: Well, I'm opposed. The Jury has not complained about the Jury Deliberating Room. They've been – they've had lunch, they were taken out for dinner across the street to the Hamilton Plaza. I mean –

THE COURT: Okay.

MR. CHARLES: Let me add one other thing. Even at one point, they complained that the room was so warm that they had to have a break from it. It's now 9:00 o'clock. I'd also let the record reflect that it's taken less time – it took less time for the Jury to go through 46 Exhibits, 25 to 24, 24 Witness's testimony and to deliberate on a verdict in this case. It took less time for that to take all the Commonwealth's evidence, all the cross examination, the Charge, everything into affect and [87] come to a verdict and this time here, that they're taking on this issue is longer than they took on the guilt determining phase.

MR. MOYER: Well, it's a more serious issue. So, it's to be expected.

MR. CHARLES: Well, your Honor, I think anything passed now, you're going to have a verdict that is produced by oppression.

THE COURT: Now, I think you're being very close, but I think we're a little premature at this juncture. We're going to deny the Motion.

MR. CHARLES: Okay.

THE COURT: Now, as you know, I guess I did tell you, they're requesting Exhibits 1 and 2 from the Sentencing Hearing. I think we've agreed it was not admitted and, therefore, we can't accede to their wishes, right?

MR. CHARLES: Yes.

MR. MOYER: Are you going to inquire as to whether or not there's been any movement to determine whether or not to send them home, I said sequester them or – I mean while they're out now, I think we might as well ask them those questions.

THE COURT: All right, I will, I'll explore. Then maybe you can renew – let's see what they [88] say.

MR. MOYER: Do you have an objection to that.

MR. CHARLES: To what?

MR. MOYER: Asking those kind of questions.

MR. CHARLES: Those kind of questions, no. I mean, I object to them being sequestered, obviously, I object to –

THE COURT: No, no, the question's with – oh, no, I agree.

MR. MOYER: But you object to them being sequestered, and you also object to them being sent home, is that correct?

MR. CHARLES: I object to them being allowed to deliberate any further. That's what I object to.

MR. MOYER: And you also object to them being –

MR. CHARLES: I want him to direct a verdict of life right now.

MR. MOYER: Right, I understand that. And in addition –

MR. CHARLES: No, let's see where they're at. I want to hear what the answer is too, then I'll come back and renew my Motion.

[89] THE COURT: But, at this point, do you have any objection to the question then?

MR. CHARLES: No, Judge, if you're going to try and find out where we're at.

THE COURT: All right, I think we're in the right track then.

(Whereupon side-bar conference concludes)

THE COURT: All right, you may bring the Jury in. Let the record reflect at 9:00 o'clock, the Jury had a request and that the Jury was permitted to enter the Courtroom. At the time, the Defendant was present, with Co-Counsel, as well as, the Prosecutor and the Assistant District Attorney.

(Whereupon the Jury enters the Courtroom)

THE COURT: Now, ladies and gentlemen, a note was passed to the Court through its Staff, and it reads, "we request Exhibits 1 and 2 from the Sentencing Hearing?" Be quite frank with you, it taxed my memory as to what it was and after discussing with Counsel, apparently, reference was made to the fact that they were docket entries that Miss Glaessman – Mrs. Glaessman had

[90] testified to with respect to the pr – two prior convictions of the Defendant. Is that what you wanted?

FOREMAN: And basically, that was just dockets as far [sic] her testimony, nothing more. The evidence itself is just two documents of her testimony?

MR. MOYER: Judge, may we approach?

THE COURT: Yeah. Did I understand you correctly, you want to see the dockets or her tes – you want to hear her testimony, is that what you said?

FOREMAN: The Exhibits that were entered –

THE COURT: Right, they were not entered, that's the trouble.

FOREMAN: Okay, they were not entered.

THE COURT: That is one of the difficulties here.

FOREMAN: That's for clarification, we weren't sure, 1 and 2 were not entered as –

THE COURT: They were not entered as of record. They were not offered, and they were not received. But you said something about a testimony?

FOREMAN: No, I just was giving you for what you were saying –

THE COURT: Oh, all right. Well, then let me say this to you, for the obvious reason since they were not entered or received, we can't show them to you, all [91] right.

FOREMAN: See, we were actually debating as to if they were entered or received as what's ever required of this.

THE COURT: They were not, they were not.

FOREMAN: Please bear with us. This is hard on all of us. This –

THE COURT: Oh, no, I understand. It's a very –

FOREMAN: We made a question that seemed very trivial to you people but to me, they're not trivial.

THE COURT: Oh, no, it's not trivial. No, it's not trivial, no, we understand that, and I – I don't know where you got the idea that we considering [sic] it as such.

FOREMAN: No, I just –

THE COURT: No, no.

FOREMAN: – I'm just making an observation, myself.

THE COURT: While you're out here, and you have now been and have had this case since 12:00 o'clock although, several hours were with lunch and dinner. At this point, at 9:00 o'clock this evening, could you state whether you have and can anticipate possibly reaching a unanimous verdict.

FOREMAN: For this evening? No, I think [92] we're going to request that we have a recess until tomorrow. We're almost – I shouldn't say anything more than that. It's just – we're not deadlocked or any of that. It's just –

THE COURT: Well, let me ask you this. Have you discussed this, is this your opinion or when I say that now, I'm talking – is this something that you discussed as a Jury?

FOREMAN: Right.

THE COURT: All right. Well, –

MR. MOYER: Judge, may we approach the bench?

THE COURT: Well, at this juncture, we'll excuse the Jury then. If that's the only question you have, the only request I can't accede to your request, all right.

MR. MOYER: Judge, before the Jury is excused, may we approach the bench?

THE COURT: All right.

(Whereupon Counsel approach side-bar)

MR. MOYER: I just want a clarification, because I wasn't – I wasn't clear on it myself and that is concerning testimony. Do they want testimony concerning [93] the Rape case read again or not? Because they said something about testimony and then docket entries, and I don't think they're clear. I just think that we should make sure whether they're clear or not.

MISS DANTOS: He said –

THE COURT: I asked him whether they wanted something read, and I got the impression they didn't want it.

MISS DANTOS: What he said was, he was just trying to explain, is what was in the docket what she testified to.

MR. MOYER: She, I'm not sure what she is.

MISS DANTOS: Glaessman, because the Judge said Glaessman.

MR. MOYER: She – but she could also mean Joe Macrenna, you know, Kelly Waldron, Doris Glaessman. I don't know, I just would ask that it be made clear as to whether or not they need testimony read back from the –

THE COURT: Well, I thought I asked that, but I will again.

(Conversation between Judge and Foreman)

THE COURT: Now, your request is quite clear, you wanted Exhibits 1 and 2, and I indicated we [94] can't give that to you. Is there something else? Did you want something read back, her testimony, when I say that, Doris Glaessman's testimony or what was it that you were interested in?

FOREMAN: Well, basically, what brought all of this about is, I don't know if it's either relevant to the – someone questioned if we could possibly find out what the sentence was of the first –

THE COURT: Oh.

FOREMAN: – the length of the sentence.

(Whereupon that conversation concludes)

MR. MOYER: I told you, told you that's what they wanted to know.

THE COURT: That I can't give you nor could we give you nor was it indicated either.

FOREMAN: Right, that's the question.

MR. CHARLES: Judge, another question. He has it in front.

JUROR NUMBER 3: No, it's – we want to know if it was – the sentence was – if he got released on behavioral. –

FOREMAN: It was commuted in any way, the original sentence.

[95] THE COURT: Well, that we can't give you.

MR. MOYER: You can't tell them.

THE COURT: All right?

FOREMAN: Fine and as far as being recessed, is there any possibility of that?

THE COURT: Well, we'll discuss that. Meanwhile go back and begin to deliberate again, then we'll take that matter up, and we'll see where we go with it.

FOREMAN: Thank you.

THE COURT: All right.

(Whereupon the Jury leaves the Courtroom)

MISS DANTOS: Is that all you wanted on the record, Mike?

MR. MOYER: Um-hum. Really interesting?

THE COURT: Pardon.

MR. MOYER: We can go off the record.

MR. CHARLES: No, I oppose.

(Whereupon proceedings are off the record)

THE COURT: You said go off.

MR. MOYER: I asked to go off.

THE COURT: I don't see why we should.

[96] MR. CHARLES: I renew my Motion for you to direct a sentence of life imprisonment right now. It's now 9:10, they're not going to come back with anything by 10:00 o'clock, your Honor. It's been – going to be 10 hours. I object to them being sequestered, I object to this going on into tomorrow, and I renew my Motion for a life sentence.

MR. MOYER: Judge, the Jury Foreman has indicated they are not deadlocked.

THE COURT: That's the trouble.

MR. MOYER: He made it crystal clear, they are not deadlocked. He has made it absolutely crystal clear, they are not deadlocked.

MR. CHARLES: Do you see the condition of that Jury?

MR. MOYER: I agree.

MR. CHARLES: They're sitting you with their heads barely above the chairs.

THE COURT: Well, that's –

MR. MOYER: It's a hard job.

THE COURT: And that's exactly why he want's to recess until tomorrow.

MR. MOYER: That's right, and I think that is a fair request, and I think that's a good request, and I think that's what we should do. We should re – we should bring them out and send them either to be sequestered or [97] send them home and have them resume deliberations tomorrow morning.

MR. CHARLES: That's objected to.

MR. MOYER: They are not deadlocked.

MR. CHARLES: That's – well, we can explore what that meant. I don't think that that – I mean, we can ask –

MR. MOYER: It's obvious what it means.

MR. CHARLES: It's not obvious to me what it meant.

MR. MOYER: Well, I think it's obvious to the Court.

MR. CHARLES: Well, I don't know what's obvious to the Court. Let the Court say what's obvious.

MR. MOYER: I think he already has.

MR. CHARLES: Judge –

THE COURT: I specifi – he made that clear when we met the last time.

MR. CHARLES: Judge, if it's 10:00 o'clock at night, they'll have been out 10 hours, okay.

MR. MOYER: No, that's not true.

MR. CHARLES: They'll have – it'll be 10 hours since they went out.

MR. MOYER: With lunch and dinner.

MR. CHARLES: With lunch break and a dinner [98] break. That is certainly more than enough time to deliberate this sentence, and I strenuously object to them being released for the night or sequestered and brought back tomorrow.

MR. MOYER: Judge, they – he's made it absolutely crystal clear they are not deadlocked. If we are close to a unanimous verdict, I ask you that we do it and if it's that close, and I suspect that it is, because he's saying they are not deadlocked, we can only go on what they've said, and he has said, they are not deadlocked. I would ask that the deliberations be broken off and the Jury be sequestered for the night and begin again tomorrow morning fresh.

MR. CHARLES: Your Honor, he said they're not deadlocked and there's no way we can do it tonight, any more tonight.

MR. MOYER: That's right, so we do it tomorrow.

MR. CHARLES: What's the term? You're splitting hairs over words, they're deadlocked, they're not coming to an agreement.

MR. MOYER: Well, then they were deadlocked a minute after they went into the Jury Room for that matter if that's the way you want to define the term.

MR. CHARLES: They are not – it's 10 hours [99] later. They are – they do not have a verdict –

MR. MOYER: How do we know that there hasn't been movement? How do we know there hasn't been movement to a unanimous verdict? We don't know that.

MR. CHARLES: Maybe there is a way that we can ask them before you make this decision, but I strenuously object to that.

MR. MOYER: Well, I strenuously object –

THE COURT: The only thing I could have said, I'll be quite frank with you, if they had indicated they were deadlocked.

MR. MOYER: Right.

THE COURT: Then I would have no problems with it, as far as I'm concerned, entertaining your Motion.

MR. CHARLES: Before you send them back –

THE COURT: But when they don't say that, that means, they're the ones that evaluate it.

MR. MOYER: Well, that's right.

MR. CHARLES: I mean, that's one person that's the Foreman –

MR. MOYER: That's the Foreman, though.

MR. CHARLES: But they had so many different questions.

THE COURT: No, no, I asked him that. Are you speaking for yourself or was this something you [100] discussed amongst the Jury? And he said, amongst the whole Jury.

MR. MOYER: Right.

THE COURT: That's what he said. Now, if it were him, if I had that sneaking suspicion, well, then I'd want to know, but they would have said something.

MR. CHARLES: Well, there's got to be – then there's got to be another way to find out where they're at

MR. MOYER: Find out? We found out. He has communicated –

MR. CHARLES: You don't know.

MR. MOYER: – on behalf of the Jury –

MR. CHARLES: I don't believe so.

MR. MOYER: – that they are not deadlocked.

MR. CHARLES: Judge, I don't know what that means. It's been 10 hours, and they're not close to a verdict.

MR. MOYER: We don't know that.

MR. CHARLES: Well, let's –

MR. MOYER: You don't know that, Fred.

MR. CHARLES: – let's ask. Are you close –

MR. MOYER: They have said –

[101] MR. CHARLES: I thought you said –

MR. MOYER: – they have said they are not deadlocked.

MR. CHARLES: – are you close to a verdict and they said no, not tonight.

MR. MOYER: And they have sa – and he said, we are not deadlocked.

THE COURT: Well, all right, I'll tell you what we're going to do.

MR. MOYER: There's a –

THE COURT: I said they will go until 10:00 o'clock and then I'll call them back in and then we will ask those questions and depending what their answer is, then we'll entertain your Motion.

MR. CHARLES: Thank you, Judge.

THE COURT: And I'm not saying which way we'll go. It's funny they don't come in, all right.

MR. CHARLES: Your Honor, again, you saw the condition of that Jury. My God, they're weak.

MR. MOYER: So, the Room is hot.

THE COURT: Well, all right, they're tired.

MR. MOYER: So, the Room is hot.

THE COURT: What they're saying is, they'd like to have a break.

MR. MOYER: That's why we out to break now [102] and have them come back tomorrow.

MR. CHARLES: It's going to become an oppressed verdict. That's why we want to declare this to be a directed verdict of life on his sentence.

THE COURT: Well, I understand. I don't – you know, I can understand your position. You have an obligation to your client, fine. Well, all right, that's what we'll

do. We'll recess until 10:00 o'clock and then we'll reconvene with the Jury and let's see where they are at that point. All right, Mr. Schaeffer.

(Whereupon side-bar conference concludes)

COURT CRIER: All rise please, this Court will be in recess until 10:00 o'clock.

(Whereupon the Court is in recess until 10:00)

THE COURT: All right, it is 10:00 o'clock, in fact, it's two minutes after 10 and under the circumstances and the Jury indicating at 9:00 o'clock that they were talking in terms of recessing for the evening. We will bring the Jury back into the Courtroom and explore with them as to where they are with respect to being deadlocked or not. You may bring the Jury in please, and [103] at this time, when the Jury was permitted to enter the Courtroom, the Defendant was present along with Counsel as well as the Prosecutor and the Assistant District Attorney.

(Whereupon the Jury enters the Courtroom)

THE COURT: Now, ladies and gentlemen, in view of our last discussion or our last get together at 9:00 o'clock, it has been a long and a trying day, and I'm sure it has been for you. At this moment, I would like to ask a question whether or not you, in your opinion, as to whether or not you are deadlocked or not deadlocked?

FOREMAN: No, we're not deadlocked.

THE COURT: You're not deadlocked?

FOREMAN: No.

THE COURT: Now, Mr. Humbold, you're the Foreman?

FOREMAN: Correct.

THE COURT: Again, I must ask the question, are you speaking for yourself or are you speaking for the entire Jury, have you discussed this point?

FOREMAN: I am the spokesman, I'll speak for the entire Jury.

THE COURT: Do you all agree with your Foreman?

[104] JURORS: Yes, your Honor.

THE COURT: All right, so then I take it, you would like to recess, at this juncture, and then reconvene tomorrow morning?

FOREMAN: Yes, if it pleases everyone else.

THE COURT: Very good. All right, now, then, I have to ask Counsel, do you have any objection to the Jury being released to go home with, of course, directions as to their conduct in the interim?

MR. CHARLES: No.

MR. MOYER: We are not opposed to that.

THE COURT: We are not, all right. All right, ladies and gentlemen, then what we're going to do is adjourn then until tomorrow morning – when would you like to come back, 9:00 o'clock or 9:30? I'll leave it up to you, you've been very –

FOREMAN: 9:30.

THE COURT: 9:30, all right. You all look very tired, very good. All right, we will adjourn then until

tomorrow morning at 9:30 and the Jury is excused to go home with the directions that, again, not to read anything that might appear in the newspaper or watch anything that might appear on television. I don't mean to insult your intelligence by constantly repeating it but sometimes we might forget, and you can well imagine, this [105] is a very serious moment and position that you're in. So, all right, now, with that instruction then, we will reconvene tomorrow morning at 9:30, very good.

COURT CRIER: All rise please, this Court will be adjourned until tomorrow morning at 9:30, 9:30 tomorrow morning.

(Whereupon testimony concludes for the day)

CERTIFICATION

I.

I hereby certify that the proceedings are contained fully and accurately in the recordings taken by me in the hearing of the above case and that this is a correct transcript of the same.

DATE: November 1, 1989

[Illegible]
COURT MONITOR

IN THE COURT OF COMMON PLEAS OF
LEHIGH COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	)	NO. 682/1988
vs	)	Jury Trial
RONALD ROMPILLA	)	November 3, 1988

VOLUME VIII
VERDICT
HEARD BEFORE
THE HONORABLE DAVID E. MELLENBERG, J.

APPEARANCES:

For the Commonwealth: MICHAEL MOYER, ESQUIRE
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Lehigh County Courthouse
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455 Hamilton Street
Allentown, PA 18105

For the Defendant: FREDERICK CHARLES, ESQUIRE
MARIA DANTOS, ESQUIRE
Public Defender's Office
Lehigh County Courthouse
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455 Hamilton Street
Allentown, PA 18105

Court Monitor: Lori A. Reichl

[2] (Court called to Order)

THE COURT: All right. Let the record reflect that we tried to get a hold of Mr. Moyer for the purpose of

opening up this on the record that we've reconvened and the Jury is all here. I would like the Jury in please and at 9:48, the Jury entered with Counsel for the Defendant being present.

(Whereupon the Jury enters the Courtroom)

THE COURT: All right. Now, ladies and gentlemen, this is only for the formality of placing on the record that, indeed, since last night we adjourned, and you were permitted to go home, I would like the record to reflect that at 9:50, this morning, when the Court convened, the full Jury, empaneled Jury, was present, and we will now, then, excuse the Jury to continue with your deliberation, all right.

FOREMAN: Very good, thank you.

THE COURT: Very good.

(Whereupon the Jury leaves the Courtroom)

THE COURT: All right, Mr. Schaeffer, we [3] will then adjourn until further notice.

COURT CRIER: Court will be adjourned until further notice.

Whereupon Court is adjourned until further notice)

COURT CRIER: All rise please, Court is again in session, you may be seated.

THE COURT: May I see Counsel up here a second.

(Whereupon Counsel approach side-bar)

THE COURT: The Jury asked the question, "was the Defendant offered any type for rehabilitation either while in prison or after his release from prison?"

MR. CHARLES: Your Honor, –

THE COURT: And you all agree –

MR. MOYER: It's not in evidence. It's not in evidence. You can't answer that.

THE COURT: All right, I can't, I can't answer it.

MR. CHARLES: Your Honor, at this point, you've read that onto the record. It's 10:45, okay, they have had all night to rest. They've been back, they've [4] been deliberating for at least an hour. This question, I believe what this is starting to get to, I believe, that whoever the majority is, is starting to beat up on the minority and these kinds of questions continue to come. We have gone the full gambit from was he paroled, could he get a commuted sentence, did he get rehabilitation, the issue of aggravating factors versus mitigating factors and back mitigating versus aggravating, has long since gone, and I think what you have is that you have one person or maybe two that feel one way and the other 10 feel the other way, and they are starting to coerce this Jury into a verdict, and I move now, for your Honor to direct a verdict of life.

THE COURT: You may be very, very true in your observation, however, that one or two persons all they have to do is say in here, we're deadlocked, that we'll never go along with the others and then I'll be happy to entertain the Motion.

MR. CHARLES: But they don't get the chance to say it, Judge, because –

MR. MOYER: Now, that's –

THE COURT: But I don't agree with you.

MR. CHARLES: – the Foreman speaks.

MR. MOYER: Oh, wait, that's not true because yesterday, the Judge asked –

THE COURT: Oh, no, I've asked –

[5] MR. MOYER: – everyone –

MR. CHARLES: One time you did.

MR. MOYER: – are they – are you deadlocked and every single one of them said no, we're not.

MR. CHARLES: That's correct, that's correct.

THE COURT: That's what has me shocked.

MR. CHARLES: That's correct, that did happen last night, but your Honor, it's getting to the point –

THE COURT: Well, let me say this, –

MR. MOYER: They've only been in another hour – we've only been an hour this morning. That is nothing.

THE COURT: I think – let me say this. I think when we get to noon, I'll ask again.

MR. MOYER: Fine.

THE COURT: Okay and then – and if they say no, Fred, I'll be quite frank with you –

MR. CHARLES: Judge, at some point in time, with all due respect, you've got to find them deadlocked no matter what they say. You can't sit for five days and listen –

MR. MOYER: Why not?

THE COURT: Why not?

[6] MR. CHARLES: Because they're – I don't believe they're on the issue of what –

MR. MOYER: The Jury knows more about what's going on in that Jury Deliberation Room –

THE COURT: Yeah, they know what they're talking about, I don't know.

MR. MOYER: – than any of us do.

MR. CHARLES: Well, your Honor, –

THE COURT: All right.

MR. CHARLES: Okay.

THE COURT: Well, any way, let's dispose of this.

MR. CHARLES: My Motion's denied I –

THE COURT: I under – right, if that's what your Motion is, fine, that's denied.

(Whereupon side-bar conference concludes)

THE COURT: All right, bring in the Jury please.

(Whereupon the Jury enters the Courtroom)

THE COURT: All right, ladies and gentlemen, let the record reflect that the Jury was [7] reconvened in Court at 10:46 in response to a question they had and written and submitted to the Court. That present was the Defendant, his Counsel, as well as the Prosecutor and the Assistant District Attorney. Ladies and gentlemen, I understand the question that I have here that was handed to me reads, "Was the Defendant offered any type of rehabilitation either while in prison or after his release from prison?" Is that the question?

FOREMAN: Correct.

THE COURT: Well, I'm sorry to say, I can't answer that. I can only tell you that you're going to have to make your decision based upon the evidence that was presented and in accordance with the Law with respect to Sentencing Hearing. First of all, I couldn't even answer it if I wanted to or if I could, I don't know.

FOREMAN: Could I change the question to the point that is – isn't rehabilitation available in prison?

THE COURT: Well, again, I would like to even answer that, and I can't. You're going to have to rely upon your own knowledge of that aspect if, indeed, that is a part that troubles the area that you're interested in. The penology system, I'll be quite frank with you, is not an issue before – before you with respect to the Law that it's a decision that you must make. I can [8] understand your interest, however, as I say, we're constrained to, you know, comply with whatever evidence that was put on in the hearing and then your decision must be based upon whatever the Law says and whatever you may find. All right. Very well, then, the Jury's excused to return to deliberate, very good.

(Whereupon the Jury leaves the Courtroom)

THE COURT: All right, Mr. Schaeffer, we will adjourn then until further notice.

MR. CHARLES: Your Honor, I renew my Motion.

THE COURT: I understand, and we – it's denied. Now, let me say this, I think I would want you back here, say, – they have to order lunch – like I say, there's always a logistics problem here. Get Mrs. Haas. Mrs. Haas, when do – when's the latest you can order lunch for the Jury if, indeed, we reach that point, 11:30?

MRS. HAAS: She said about quarter after 11.

THE COURT: That early.

MRS. HAAS: Maybe it won't be a problem because most of them get the buffet. Maybe that'll help now.

[9] THE COURT: All right.

MRS. HAAS: See, the first couple days, they didn't give us the buffet and now they give it to us. So that goes quick, quicker, you know, there's nothing to make, because they just get the buffet.

THE COURT: All right. Then we'll reconvene at quarter of 12, all right. Very good.

COURT CRIER: Court will be in recess and will reconvene at quarter to 12.

(Whereupon Court is in recess)

COURT CRIER: Court is again in session, you may be seated.

THE COURT: All right. Let the record reflect, the Jury was permitted to enter the Courtroom at 10 to 12, that'll be 11:50. At present were the Defen – you may bring the Jury in please. Present, were the Defendant, her – his Counsel, as well as the Assistant District Attorney and the Prosecutor.

(Whereupon the Jury enters the Courtroom)

THE COURT: Now, ladies and gentlemen, I have no idea how long you've been deliberating, but I know [10] it's in excess of 10 hours. Let me ask you this, are you deadlocked at this juncture?

FOREMAN: No.

THE COURT: You're still not, all right. Do you all agree with that conclusion?

JURY: (Nods affirmative).

THE COURT: All right. What we'll do then, we'll have to order lunch, all right. We will – all right, Mr. Schaeffer, we'll adjourn then. Miss Haas, if you'll take whatever you do, all right.

FOREMAN: Your Honor, I don't know for sure, some of the people rather just have it sent in here than rather than just go waste all that time.

THE COURT: Oh, all right. Well, now, the big problem is, from where? From whence.

FOREMAN: I don't know if that's –

THE COURT: All right, whatever you're gonna – we'll talk it over then, if you have some suggestions, why maybe we can accommodate you, very good, all right.

COURT CRIER: All rise please, Court will be in recess until further notice.

(Whereupon the Court is in recess)

[11] (Whereupon Counsel approach side-bar)

THE COURT: Mr. Charles, what do you have?

MR. CHARLES: May it please the Court, from what I saw when you asked, are you deadlocked, and you said, does everybody agree with that? One of the Jurors shook her head no and went like this and just shook her head no, and she appeared to be crying from what I saw. The fifth Juror, shook her head in the negative when you said, does everybody agree, and she appeared to be crying, and I –

THE COURT: All right, maybe what we should do –

MR. CHARLES: Individually –

THE COURT: – next time, we'll take it individually.

MR. CHARLES: Can we have them come out now and have them polled, Judge?

MR. MOYER: Judge, no, the problem with that is that the Foreman was very emphatic about that, no. I mean, that was an emphatic no.

MR. CHARLES: Judge, –

MR. MOYER: And you asked the Jury, are we all in agreement and nobody spoke up at that point. We don't know what she's hiding her head about.

[12] THE COURT: No, she didn't say a word. I didn't see her shake her head.

MR. MOYER: I didn't either.

MR. CHARLES: I did. Your Honor, –

MR. MOYER: Let's assume – can I finish? Let's assume that she was shaking her head. We have no idea what she's shaking her head about –

MR. CHARLES: And I'd like to find out.

MR. MOYER: Maybe she – excuse me. Maybe we're – maybe she's shaking her head, because she's disgusted with another Juror. We don't know that.

THE COURT: Yeah.

MR. CHARLES: Let's find out, Judge. Judge, let me –

THE COURT: 'Cause it was very easy for her –

MR. CHARLES: Judge, –

THE COURT: – after I said that, all she had to say, now, wait a minute, I don't agree.

MR. MOYER: Exactly.

MR. CHARLES: I don't know if they know they can do that and here's my – I – listen, Judge –

MR. MOYER: He asked them three times –

MR. CHARLES: Can I finish?

MR. MOYER: – once this morning and twice [13] last night.

MR. CHARLES: Okay, can I finish?

THE COURT: All right.

MR. CHARLES: Can I get one through from the start to finish then?

THE COURT: All right.

MR. CHARLES: I'm saying this, I believe that there is a majority that is pushing, from the nature of the questions and is, I believe, trying to coerce a majority of maybe one, and I believe it may be that fifth Juror or maybe two into turning the verdict from life to death.

THE COURT: You may be right, I don't quarrel with you.

MR. CHARLES: Your Honor, –

THE COURT: I can't quarrel with you.

MR. CHARLES: – that person is crying, she looks like she's been beaten, almost – that she –

MR. MOYER: Beaten?

MR. CHARLES: I don't mean physically –

MR. MOYER: I object.

MR. CHARLES: – I mean, that's an analogy.

MR. MOYER: Yeah, okay, I object to that.

THE COURT: All right.

MR. CHARLES: She looks worn out, she was [14] teary eyed and when you said, is that right, we're not deadlocked, she shook her head no, and I saw it and all I'm saying is, I believe that –

THE COURT: Well, did everybody else see that?

MR. CHARLES: I know that we saw it at our table, and I think –

THE COURT: Well, you're the only one because I looked at her too, I'll be quite frank with you about that.

MR. CHARLES: Your Honor, I'm telling you this as an Officer of this Court, –

THE COURT: Well, –

MR. CHARLES: – and I believe that if – I would like an individual polling as to whether or not they are deadlocked. Not having the Foreman simply say it and everybody else just keep quiet or look the other way. I am also, again, asking for that, and I am renewing my Motion for you to direct this to be a life sentence. It is now lunch time of the second day and Judge, –

THE COURT: Well, when I hear from them they say they're deadlocked, then we'll entertain but right now, I can't.

MR. CHARLES: Please ask – please individually poll them, your Honor, and let them say yes [15] and no whether they think they can come to a verdict. I am asking for an individual polling. I believe they are working on one Juror, and they may get it done before even lunch is done. I'm asking, before they retire to lunch, that you poll the Jury individually and ask them if there is a

chance for them to come to a verdict or they feel they're deadlocked. An individual polling, your Honor, I am – I'm requesting the Court, I don't think that's too much to ask, please.

MR. MOYER: Judge, I don't think that's – that's part of the process to – his characterization of working over a Juror, we don't know what's going on in that Deliberation Room.

THE COURT: That's right.

MR. MOYER: If a person was being overworked, these are adults, they're intelligent people, they would speak up. You've, on three occasions, asked them if they were deadlocked and on three occasions, they have all indicated that they were not deadlocked. The Jury Foreman was very emphatic this – this morning, he was emphatic last night. I think under those circumstances, he's way out of line with his request. Maybe later on, this afternoon, we'll find out then.

THE COURT: All right.

MR. CHARLES: Could I respond to that, [16] please, Judge? The Jury Foreman not only gave the Jury a question but then he formulated the second question. The question is, did he have a chance to be rehabilitated or was he rehabilitated in prison or whatever that – or on the street. The answer's we can't answer. Well, then can we ask it this way. I mean, there was no deliberation for a second question. The next one is, well, was it offered to him. It's plain –

MR. MOYER: Well, what does that mean?

MR. CHARLES: – that that person is –

THE COURT: That doesn't mean anything. Well, maybe he's asking the question trying to get an answer for one of the other Jurors.

MR. CHARLES: Your Honor, I think it's clear to –

THE COURT: I don't agree with you.

MR. MOYER: We don't know, you're speculating.

MR. CHARLES: Now, what would it hurt to have individual polling.

THE COURT: I mean, you're reading things into this, Mr. Charles that are not there. Now, at this time, –

MR. CHARLES: What would it hurt to have –

THE COURT: – we're going to end it right [17] now.

MR. CHARLES: Okay.

THE COURT: Motion denied. Now, then, I don't deny we'll take it up this afternoon but right now, Motion denied.

MR. CHARLES: Could we consider it – when we take it up, having the individuals polled instead –

THE COURT: Well, I think maybe we're –

MR. CHARLES: – of having one spokesman –

THE COURT: – getting to that point now, that's true. All right.

MR. CHARLES: – speak for all of them.

THE COURT: We'll entertain that the next time and then make it a Motion then we'll entertain it, all right.

MR. CHARLES: And I'm just saying for the record, your Honor, I think it may be too late for a next time. Through the lunch hour, it may be too late. She appears to be –

MR. MOYER: Well, then you can have –

MR. CHARLES: – getting extremely weak and tired.

MR. MOYER: Then you can poll them when they come back with the verdict.

THE COURT: I wish I had your facility to [18] reading minds, Mr. Charles, but you read a lot of things that I don't see. All right. All right, Motion denied.

(Whereupon side-bar conference concludes)

THE COURT: Where can we –

MRS. HAAS: I'm going to try the Pizza Mart, right up the street.

THE COURT: Is that all they want?

MRS. HAAS: Yeah, he, at one point, had told me if I ever, you know, have a Jury that they would deliver pizza. So, I'm going to see if I can get them there, if not, I know Domino's will. But I don't know if they'll take –

THE COURT: But my point is, is that one person says they want a pizza or do they all agree on that?

MRS. HAAS: They all agreed, I asked.

THE COURT: What about something to drink?

MRS. HAAS: Well, I said I could do that upstairs. It would be easier for me to just to go up and get what they want upstairs.

THE COURT: They don't like going up there then. We're going to isolate them keep them apart.

MRS. HAAS: No, no, I will go get it for them.

[19] THE COURT: Oh, all right. Okay, well, let's try that.

MRS. HAAS: I'll do it myself.

THE COURT: Very good, all right. I think we're still adjourned.

COURT CRIER: Yes, Judge.

(Whereupon Court is adjourned)

COURT CRIER: Court is again in session, you may be seated.

THE COURT: Let the record reflect that the Court has been informed that the Jury has arrived at a verdict and at 1:40, you may bring the Jury in please. At 1:40 when the Jury was brought into the Courtroom that present were the Defendant, his Counsel, as well as the Prosecutor and the District Attorney.

(Whereupon the Jury enters the Courtroom)

THE COURT: Now, ladies and gentlemen, I understand that you have arrived at a verdict, is that correct?

FOREMAN: Correct.

THE COURT: All right, the clerk will [20] receive the verdict please.

FOREMAN: Your Honor, may I address the Court please, if possibly before the reading of this.

THE COURT: Do you want to make a statement you say?

FOREMAN: Yes, I believe – we, the Jury, have a request in the form of a question. That due to the magnitude of our decision one way or the other, life or death, we are asking if it's necessary Ron's son be present for the reading?

THE COURT: Ronald – the Defendant?

FOREMAN: His son.

THE COURT: Oh, his son.

FOREMAN: Right. Which ever way the decision is.

THE COURT: Well, it's a public meeting a public hearing, I don't see how I could –

FOREMAN: No, we're just thinking of Ron's son, himself. So, if someone could make a decision.

THE COURT: Well, I think, I assume they realize the gravity of what the decision would be and that, I assume, they look out for the best interest of this young man. I certainly – would certainly recommend that he not be present, but I couldn't order it. I don't think it would be appropriate for the Court under the circumstances [21] to order it.

FOREMAN: Thank you.

THE COURT: All right.

(Whereupon roll call of Jurors was taken)

THE COURT: All right. Now, the clerk will read the verdict, and it's got to be read in its entirety both as to Sentence as well as the – their findings and if the Jury should agree with what is repeated to you, then it shall be entered as a verdict of this Jury, all right.

CLERK: Commonwealth of Pennsylvania versus Ronald Rompilla, Case Number 682 of 1988. We, the Jury, unanimously sentence the Defendant to death. The findings on which the Sentence of Death are based on; one or more aggravating circumstances which outweigh any mitigating circumstances. The aggravating circumstances unanimously found are: One, as submitted to Jury, two, as submitted to Jury, three, as submitted to Jury. The mitigating circumstances found by one or more of us are: One, the son of the Defendant being present and put on witness stand, two, possibly – possibility of no rehabilitation during incarceration and after release. So say you all?

Jury: I do.

THE COURT: All right, now before – before [22] you be seated please, I think I will have to – I ask one question, so that we have this correct because as submitted to Jury, I'm not quite sure what that means.

FOREMAN: In reference to what was said as to 1, 2, and 3 on the first page, your Honor, the aggravating circumstances.

THE COURT: Oh, I see. In other words, as submitted on the first page, the Defendant committed a killing while in the perpetration of a felony.

FOREMAN: Correct.

THE COURT: Two, the offense was committed by means of torture.

FOREMAN: Correct.

THE COURT: And three, the Defendant has a significant history of felony convictions involving the use or threat of violence to the person.

FOREMAN: Correct.

THE COURT: This is what the Jury meant by the answers to the Question Number 2 under B?

FOREMAN: Correct.

THE COURT: Which you have as outlined, as submitted to Jury?

FOREMAN: Correct.

THE COURT: All right, I think that's clear.

[23] MR. CHARLES: Your Honor, is there a finding that the aggravating factors outweigh the mitigating factors in that Slip.

THE COURT: Yeah, well, no, no, they say, one or more aggravating circumstances which outweigh any mitigating circumstances and then they unanimously found the three that were referred to. You're saying then, if I understand this correctly, so, that there's no question, that the aggravating circumstances as found, 1, 2, and 3 outweighed the mitigating circumstances that you found listed as 1 and 2?

FOREMAN: Correct.

THE COURT: Correct, all right.

MR. CHARLES: Your Honor, I'd like the Jury polled as to life or death.

THE COURT: Well, now, are you talking about, Mr. Charles, the question of the Sentence to be imposed?

MR. CHARLES: Yes.

THE COURT: Or what about the – do you want everything then, too –

MR. CHARLES: Yes.

THE COURT: – the aggravating circumstances –

MR. CHARLES: Yes.

[24] THE COURT: All right. The clerk will poll the Jury with respect –

MR. MOYER: Your Honor, may I be heard on that?

THE COURT: Pardon?

MR. MOYER: May I be heard on that?

THE COURT: All right. You may be seated, please.

(Whereupon Counsel approach side-bar)

MR. MOYER: I have no objection to them being polled as to life or death. I don't think they have to be – I don't think it's necessary, and I don't think it's proper that they be polled concerning the finding of the aggravating circumstances and the mitigating circumstances.

MR. CHARLES: I think it's proper and that's what I ask for.

THE COURT: How would it hurt?

MR. MOYER: Okay.

THE COURT: All right, understand.

(Whereupon side-bar conference concludes)

[25] THE COURT: All right. The clerk will poll the Jury. I think we'll start – we'll separate them. Separate the polling. I'm talking in terms of what you read. First of all, the Sentence.

(Whereupon the Jury is being polled)

THE COURT: Now, okay, read Question 2 and then – in place of the – where they have, as submitted by Jury, go to the beginning – where is it now, well, it were on here. Oh, that's it, all right. If you would read 2 and then instead of 1, 2, and 3, read in its place 1, 2, and 3 here. You're going to have to ask whether or not they agree with the aggravating circumstances as outlined, all right.

(Whereupon the Jury is being polled)

THE COURT: All right. Well, now go all over the others. He wanted it all. Mitigating circumstances same way but now, read as they have it there.

(Whereupon the Jury is being polled)

THE COURT: And one final one. Ask them if [26] they all agree that the aggravating circumstances weigh the mitigating circumstances and if they do, signify by saying yes.

(Whereupon the Jury is being polled)

THE COURT: All right. Anything further Mr. Charles?

MR. CHARLES: No.

MR. MOYER: Just that the Sentence be recorded, your Honor.

THE COURT: Very well. Since the Jury has agreed with the reading of the Verdict as submitted, it shall be recorded as the verdict of this Jury. Now, let me say this before you're excused, ladies and gentlemen, I understand, it was a very difficult task. I've often said that the most difficult roll [sic] of all is that of a Juror especially, under these circumstances. It's not a pleasant task. I think it goes without saying at least in this court's opinion, you all comported yourself extremely well. I think you afforded both sides the consideration in your utmost attention during the course of the trial. In any event, you go with the Court's thanks. Very good. Now, if you need anything by way of excuses, and I always find that an interesting statement but some employees, [27] require. If anything of that regard – oh, you have the vouchers? All right. My Tipstaff will see that you get vouchers then, all right. Very good, thank you very much. The Jury's excused.

(Whereupon the Jury is excused and leaves the Courtroom)

MR. CHARLES: May I approach side-bar, your Honor? Your Honor, approach side-bar for one moment?

THE COURT: Okay.

(Whereupon Counsel approach side-bar)

MR. CHARLES: I'm making a Motion that you set aside the Verdict or their Sentence, and you impose a sentence of life imprisonment.

THE COURT: You mean, I'm supposed to do that in my own Motion?

MR. CHARLES: I'm moving it, so –

THE COURT: I can't. I have to, according to the Law here, whenever the Jury shall agree upon a sentencing Verdict, it shall be received and recorded. The Court shall, thereafter, impose upon the Defendant the Sentence affixed by the Jury. Now, things will occur now, of course, it will be reviewed by the Commonweal – by the [28] Supreme Court, it's an automatic appeal, but your Motion, as such, I have to deny.

MR. CHARLES: Fine.

THE COURT: All right.

(Whereupon side-bar conference concludes)

THE COURT: All right. Could we have the Defendant up before the Court please? Mr. Rompilla, you heard the Sentence of the Jury that they determined in according to the Judicial Code, and I repeat, the direction received as ordered to the Court, whenever the Jury shall agree upon a Sentencing Verdict which was agreed to, it shall be received and recorded by the Court. The Court shall, thereafter, impose upon the Defendant the Sentence affixed by the Jury. In this regard, I will have to impose sentence in accordance with the Judicial Code. And now this third day of November, 1988, Sentence is, you pay the

costs of prosecution and that you be sen – that you are sentenced to death as found by the Jury this date and that you be sent to the Correctional Diagnostic Classification Center at Graterford, Pennsylvania, for this purpose. Mr. Rompilla, I can say this to you, there's an automatic review of this Sentence. It's – the Supreme Court of Pennsylvania and, again, the same Judicial Code requires [29] that the Supreme Court will, with its authority, correct any errors at Trial, shall either affirm or sen – or – either affirm the Sentence of Death or vacate the Sentence of Death and remand for the imposition of a life imprisonment sentence contrary, to the Sentence that I just indicated. The Supreme Court shall affirm the Sentence of Death unless, it determines: One, that the Sentence of Death was a product of a passion, prejudice or any other arbitrary factor. Two, that the evidence fails to support the finding of an aggravating circumstance specified in subsection D which are the ones that were outlined and went over in the polling of the Jury or that the Sentence of Death is excessive or disproportionate to the penalty imposed in similar cases considering both the circumstances of the crime and the character and the record of the Defendant. In addition, the record of Death Sentence, of course, is to be sentenced – sent to the Governor of Pennsylvania, forthwith. In accordance with that direction, of course, we direct that the Court Stenographer make a transcript of the entire proceedings and such shall be forwarded to the Supreme Court of Pennsylvania for review. All right. I would like to say this, though, it was a very difficult trial and, again, as I say – I must say in all fairness, that Counsel has done a superb job. I was, indeed, impressed. Do you have anything at this point [30] you would like to say Mr. Rompilla?

MR. ROMPILLA: Nothing.

THE COURT: All right. Anything further?

MR. CHARLES: No.

MR. MOYER: No, your Honor.

THE COURT: Very well, all right, Mr. Schaeffer, we will adjourn.

COURT CRIER: All rise please, this Court will be adjourned until further notice.

(Whereupon Court is adjourned until further notice)

COURT CRIER: This Court is again in session, you may be seated.

THE COURT: Now, Mr. Rompilla, one thing we did forget when we went through the Sentencing Dialogue, and I guess colloquy as to what happens. As I indicated the Sentencing Verdict, of course, will be automatically reviewed by the Commonwealth – by the Supreme Court. In addition to which though, there might be Trial errors with respect to the Trial, itself. And in this regard, you have a right to file Motion for Arrest of Judgment with 10 days. The basis for a Motion of Arrest of Judgment would be for grounds of error appearing on the face of the record or the evidence was insufficient to sustain the charge or [31] that this Court did not have jurisdiction. If the Court should rule favorably on such a Motion, you would be discharged from the – and the case against dismissed. You also have the right to file a Motion for a New Trial within 10 days of this verdict. The basis for such a Motion would be Trial errors prejudicial to you or that the Verdict was against the weight of the evidence. If the Court should

rule favorably in such a Motion, a new trial would be granted. You are represented by an Attorney from the Public Defe – Attorneys, rather, from the Public Defender's Office, you are advised that if you so desire and can afford same, you may be represented by private counsel. If you cannot afford private counsel, you are hereby advised that your Court appointed Counsel will continue to serve and represent you free of charge with respect to the Motions I've already mentioned in all proceedings including, an appeal to a higher court. You are advised, further, that only the reasons or issues contained in the Motions may be raised on appeal to a higher Court. If you fail to file these Motions, you would forfeit your right to raise on appeal any issue which could have been presented to this Court in the Post-Trial Motions. You are hereby advised that if you do file either or both of the Motions I've just mentioned, and you later withdraw them, the legal affect [sic] would be that the Verdict [32] will stand, and you would be waiving your right to an appeal to a higher Court. In advising you of your rights, I want to make it clear the Court is neither urging nor discouraging the filing of such Motions. Nor is the Court indicating how it would rule on any such Motion. I'm merely, advising you of your legal rights, do you understand what I've just said?

MR. ROMPILLA: Yes, sir.

THE COURT: Do you have any questions with respect to what I've said? Is there anything you would like to say at this time?

MR. ROMPILLA: Yes, there is – they have me in observation down there, there's no need for it, your Honor. I'm a strong minded person, you know, except –

THE COURT: I must say, you comported yourself beautifully.

MR. ROMPILLA: And there's no need for that. I'd like for you to speak with the Warden. There's no need for observation.

MR. CHARLES: Your Honor, what he's saying is this, basically, they have taken him to BAU, to Behavioral Adjustment Unit. He has to be – it's a separate unit in the prison for observation, because they feel he's some kind of a threat there because whatever reason.

[33] THE COURT: Where was this? In local prison.

MR. CHARLES: In the prison and what we're trying to tell the Warden, the people there, is that he has been no problem for the three weeks during this Trial. I think, your Honor, has observed the fact, he has never had one problem. We even had the –

THE COURT: Well, I must say, he's comported himself very well throughout the course of the Trial.

MR. CHARLES: Through a very difficult three week period, and he's never been one problem for anybody. I think the Sheriffs will attest to that, also, and they are observing him and keeping him separated. His family wants to see him. I know this is a prison matter, but we may need the Trial Judge, who has observed this, and possibly, the Commonwealth Attorney –

THE COURT: Well, to the extent that I am able to, you understand. I don't control what happens down there. They have their rules and whatever they do. But to

the extent, I would have to be the first to concur with what your Lawyer said.

MR. CHARLES: Your Honor, –

THE COURT: You've been no – you've been very cooperative.

[34] MR. CHARLES: What I'm asking for is a telephone call, and I'm going to ask them, also, to call the Attorney for the Commonwealth. I think it goes without saying that it – if you're sentenced to death, that perhaps, may be a night when you should be not left alone or isolated from the people even within the prison. Your Honor, I think it's a very difficult time.

THE COURT: Well, yeah, I don't make that judgment call, you understand?

MR. CHARLES: Well, –

THE COURT: I think that's a penology decision that I'm – I'll be quite frank with you, I've never done this.

MR. ROMPILLA: Well, they said to call – a phone call from here, they'd be satisfied.

THE COURT: This is the first time I ever had to impose a sentence. I'll be happy to do that. If that's all it takes.

MR. MOYER: I have no objection to that.

THE COURT: All right.

MR. MOYER: I would concur that Mr. Rompilla has been a perfect gentlemen during this Trial, has been no problem whatsoever, and I – I also, would tell them I

have no problem with him being with other inmates. I don't see that being a problem at this point.

[35] THE COURT: Okay. Now, who do I call?

MR. CHARLES: I would – I would just call over to either the Warden or somebody over in –

MR. ROMPILLA: Captain Gremers.

MR. CHARLES: Ca –

THE COURT: Who?

MR. ROMPILLA: Captain Greenwich.

MISS DANTOS: Greenzweig.

MR. ROMPILLA: Whatever.

THE COURT: Greenblatt, is that his name?

MR. CHARLES: Greenzweig.

THE COURT: Greenblite.

MR. CHARLES: Greenzweig.

MISS DANTOS: Zweig.

THE COURT: Oh, Greenzweig, okay, all right. I'll be happy to do that. Anything else?

MR. CHARLES: No, your Honor, just that.

THE COURT: All right. Now, again, as I say, I've ordered that the trial transcript and the Sentencing Hearing matter be transcribed immediately so that this matter can proceed on your appeal. Now, I understand Counsel as already indicated to the Court, they have every intention to filing such Motions but –

MR. CHARLES: Filing an appeal.

THE COURT: All right. I'll be happy to.[36] I'll go over there and call immediately. If you want to go along with me, you may Mr. Charles, all right.

MR. CHARLES: Thank you, your Honor.

MR. ROMPILLA: Thank you.

THE COURT: All right.

(Whereupon Trial has concluded)

CERTIFICATION

I.

I hereby certify that the proceedings are contained fully and accurately in the recordings taken by me in the hearing of the above case and that this is a correct transcript of the same.

DATE: November 1, 1989

/s/ Lori A. Reichl
COURT MONITOR

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653 A.2d 626

Supreme Court of Pennsylvania.

COMMONWEALTH of Pennsylvania, Appellee,

v.

Ronald ROMPILLA, Appellant.

Argued Oct. 20, 1994.
Decided Jan. 23, 1995.

Albert V.F. Nelthropp, for R. Rompilla.

Robert Steinnberg, Douglas G. Reichley, for Com.

Robert A. Graci, for Atty. General's Office.

Before NIX, C.J., and FLAHERTY, ZAPPALA, PAPADAKOS, CAPPY, CASTILLE and MONTEMURO, JJ.

OPINION

NIX, Chief Justice.

This is an automatic appeal[1] from the imposition of a death sentence following a trial by jury in the Court of Common Pleas of Lehigh County. Appellant, Ronald Rompilla, was convicted of murder of the first degree,[2] burglary,[3] criminal trespass,[4] robbery,[5] two counts of theft,[6]

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[1] 42 Pa.C.S. § 9711(h)(1).

[2] 18 Pa.C.S. § 2502(a).

[3] 18 Pa.C.S. § 3502(a).

[4] 18 Pa.C.S. § 3503(a)(1)(ii).

[5] 18 Pa.C.S. § 3701(a)(1)(i).

[6] 18 Pa.C.S. § 3921(a).

and two counts of receiving stolen property.[7] Pursuant to 42 Pa.C.S. § 9711(c)(1)(iv), the jury sentenced Appellant to death on November 1, 1988, after it found three aggravating circumstances which outweighed the one mitigating circumstance presented by Appellant.

Although Appellant has not specifically challenged the sufficiency of the evidence supporting his conviction, we will nevertheless undertake such a review in accordance with the standard set forth in *Commonwealth v. Zettlemoyer,* 500 Pa. 16, 26-27 n. 3, 454 A.2d 937, 942 n. 3 (1982), *cert. denied,* 461 U.S. 970, 103 S.Ct. 2444, 77 L.Ed.2d 1327 (1983).[8] In reviewing the sufficiency of the

[7] 18 Pa.C.S. § 3925(a).

[8] Appellant has apparently had a contentious history with court-appointed counsel during his trial and appeal. Appellant's discontent with his attorneys has caused him to file a number of *pro se* motions and briefs in addition to those filed by court-appointed counsel. Present counsel has appended to the Brief for Appellant what is represented to be Appellant's own brief alleging other issues not included in counsel's brief. This appended brief authored by Appellant is addressed to the trial court and is intended to be a supplemental brief in support of Appellant's post-trial motions.

This Court recently addressed the issue of an appellant's right to file *pro se* supplemental briefs while that appellant is represented by counsel. In *Commonwealth v. Rogers,* 537 Pa. 581, 645 A.2d 223 (1994), we held that although an appellant has a clear right to terminate representation *prior* to the filing of an appeal, there is no concomitant right to file a separate *pro se* brief once appellate counsel has filed briefs. *Id.* at 583-84, 645 A.2d at 224. Thus, we refused to allow the appellant in *Rogers* to terminate appellate counsel and proceed *pro se* on amended and supplemented briefs once counsel had filed briefs. It was our belief that the appellant would "confuse and overburden the court by his own pro se filing of briefs at the same time his counsel is filing briefs on his behalf." *Id.* (quoting *Commonwealth v. Ellis,* 534 Pa. 176, 183-84, 626 A.2d 1137, 1141 (1993) (emphasis omitted)). A review of the issues raised in Appellant's *pro se* brief reveals that Appellant's claims are focused on the sufficiency of the evidence and trial counsels'

(Continued on following page)

evidence, we must view the evidence and all reasonable inferences derived therefrom in the light most favorable to the Commonwealth as verdict winner, to determine whether all the elements of the offense have been established beyond a reasonable doubt. *Commonwealth v. Carpenter,* 511 Pa. 429, 435, 515 A.2d 531, 533-34 (1986).

In the early morning hours of January 14, 1988, the victim, James Scanlon, was murdered in his bar, the Cozy Corner Cafe, located in Allentown, Pennsylvania. At approximately 6:30 a.m. on that same morning, the victim's son discovered the body of his father lying behind the bar in a pool of blood. The victim had been stabbed repeatedly and set on fire. The victim's wallet had been stolen and approximately $500 to $1,000 had been stolen from the bar.

The Commonwealth's case consisted almost entirely of circumstantial evidence as there were no eyewitnesses to this killing. Appellant was seen in the Cozy Corner Cafe on January 14, 1988, from approximately 1:00 a.m. to 2:00 a.m. During that time, he was observed going to the bathroom approximately ten times. A subsequent police investigation determined that the window in the men's bathroom was used as the point of entry into the bar after it had closed.

When questioned by an investigating detective from the Allentown Police Department, Appellant stated that he

ineffectiveness. As noted above, we are obligated to undertake an independent review of the sufficiency of the evidence supporting Appellant's conviction. We also hasten to point out that Appellant is free to raise the ineffectiveness of any of his prior counsel in a subsequent proceeding. Accordingly, we will not specifically address any of the issues raised in Appellant's *pro se* brief.

had been in the Cozy Corner Cafe on the night of the murder and left between 2:00 a.m. and 2:30 a.m. because he had no money. He stated that he had only $2.00 to buy breakfast at a local diner. A cab driver testified that he picked up Appellant at the diner and drove him to two different hotels where Appellant was unable to rent a room. The driver then took Appellant to the George Washington Motor Lodge where he was able to rent a room. Appellant paid the cab fare of $9.10.

Appellant rented a room for two nights at the George Washington Motor Lodge. In doing so, he paid $121.00 in cash and flashed a large amount of cash to the desk clerks. Appellant also used a false name when he checked in.

The police secured a search warrant for Appellant's motel room and seized several items, including Appellant's sneakers. These sneakers matched a footprint in blood that was discovered near the victim's body. In addition, the blood found on the sneakers matched the victim's blood type.

The Commonwealth also presented other circumstantial evidence that linked Appellant with the robbery and murder of James Scanlon. First, Mr. Scanlon's wallet was found by a groundskeeper in the bushes, six to eight feet outside the room that Appellant had rented at the George Washington Motor Lodge. Second, Appellant's fingerprint was found on one of the two knives that was used to commit the murder. Finally, there were numerous inconsistencies between what Appellant had told police concerning his activities on January 14 and 15, 1988, and the testimony of other witnesses.

When viewed in the light most favorable to the Commonwealth as verdict winner, the evidence clearly supports

Appellant's conviction for first degree murder. Accordingly, we will now proceed to address Appellant's seven allegations of error relating to the trial underlying his conviction and sentence.

Appellant first contends that the trial court erred in allowing the Commonwealth to introduce a photograph of the victim in this case. The photograph in question, Commonwealth's Exhibit Number 5, shows the body of the victim lying face down behind the bar among a number of broken bottles. Appellant argues that the inflammatory nature of this photograph outweighs any evidentiary value that it may have had. The Commonwealth responds that the photograph is not inflammatory, and even if this Court were to find otherwise, its introduction was necessary to capture the disarray of the bar and to show the severity of the struggle between the victim and Appellant.

"We have consistently held that the question of admissibility of photographs in homicide cases is a matter within the discretion of the trial judge, and only an abuse of that discretion will constitute reversible error." *Commonwealth v. Duffey,* 519 Pa. 348, 359, 548 A.2d 1178, 1183 (1988) (citing *Commonwealth v. Petrakovich,* 459 Pa. 511, 329 A.2d 844 (1974); *Commonwealth v. Woods,* 454 Pa. 250, 311 A.2d 582 (1973)). In determining the admissibility of photographs of a corpse in a homicide trial, this Court utilizes a two-part analysis. *Commonwealth v. Chester,* 526 Pa. 578, 591, 587 A.2d 1367, 1373, *cert. denied,* 502 U.S. 849, 112 S.Ct. 152, 116 L.Ed.2d 117 (1991).

> First a court must determine whether the photograph is inflammatory. If not, it may be admitted if it has relevance and can assist the jury's understanding of the facts. If the photograph is

> inflammatory, the trial court must decide whether or not the photographs are of such essential evidentiary value that their need clearly outweighs the likelihood of inflaming the minds and passions of the jurors.

Id. 526 Pa. at 591-92, 587 A.2d at 1373-74 (citation omitted).

Based on our review of the photograph, we find that, although unpleasant, it does not rise to the level of what we consider to be inflammatory. The distance from the body and the angle from which the photograph was taken tend to diminish the inflammatory nature of the subject matter. Moreover, the number of broken bottles surrounding the victim makes it difficult, if not impossible, to discern whether the substance beside the victim is alcohol or blood.

In addition, we agree with the Commonwealth and the en banc trial court that even if we were to find the photograph inflammatory, it would still be admissible based on its evidentiary value. The photograph was introduced by the Commonwealth to demonstrate the state of disarray of the bar and the severity of the struggle between the victim and his attacker. Accordingly, we conclude that the trial judge did not abuse his discretion in admitting this photograph into evidence.

Appellant next argues that the trial court erred in answering the jury's question regarding accomplice liability. Shortly after deliberations began, the jury presented a note to the court in which it asked the following: "If Defendant was an accomplice to the Charge of Criminal Homicide, can he be charged with Murder in the First Degree?" (N.T. 10/31/88, 166). In response, the trial judge

read 18 Pa.C.S. § 306(a), which defines the general rule for liability for conduct of another,[9] and briefly explained the concept of complicity to the jury. (N.T. 10/31/88, 167-68). The trial judge then cautioned the jury:

> I can only say this to you, that you should determine this case based on the Charge of the Court as it had given [sic] you originally. There was no evidence in this case with regard to the question as posed but a simple clear answer to the question is yes, you could be charged with, and you could be convicted of Murder in the First Degree if, indeed, you're an accomplice, but it requires other proof or findings on your part that were not apart [sic] of this case nor were they made a part of this case. . . .

(N.T. 10/31/88, 168-69). Appellant argues that by being instructed on an accomplice theory and then being told to disregard it, the jury might have been confused and convicted Appellant as an accomplice.

Appellant's claim is analogous to an issue that this Court addressed in *Commonwealth v. Edwards,* 521 Pa. 134, 555 A.2d 818 (1989). In *Edwards,* the jury asked the trial judge whether it had the option to condition a verdict of life imprisonment on the defendant's ineligibility for parole. In his initial response to the jury, the trial judge deviated from the standard that we had previously prescribed when the jury asked such a question. We concluded that despite this error, the curative instruction and proper charge that were subsequently given were

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[9] 18 Pa.C.S. § 306(a) provides that "[a] person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both."

sufficient to leave the jury's death sentence undisturbed. *Id.* at 158-59, 555 A.2d at 830-31. Likewise in the instant case, we are satisfied that any error which might have resulted from the trial judge's instruction on accomplice liability was cured by the subsequent admonition to the jury that it should not consider such a theory because there was no evidence presented during trial to support such a finding.

Additionally, we reject Appellant's argument that the trial court erred in failing to grant defense counsel's request that the culpability portion of section 306 be read to the jury. As noted above, the jury was specifically instructed that it was not to consider accomplice liability in its deliberations. Therefore, the denial of Appellant's request was well within the trial judge's discretion. *See Commonwealth v. Perkins,* 473 Pa. 116, 132, 373 A.2d 1076, 1084 (1977) ("when the court provides supplemental instructions at the jury's request, it may confine those instructions to the particular questions asked by the jury, even though requested by the defendant to give yet additional instructions").

Appellant next contends that trial counsel was ineffective for failing to file a request for a bill of particulars. By requesting a bill of particulars, Appellant argues that defense counsel could have limited the Commonwealth to the single theory that Appellant was the actor and not an accomplice. "A bill of particulars is intended to give notice to the accused of the offenses charged in the indictment so that he may prepare a defense, avoid a surprise, or intelligently raise pleas of double jeopardy and the statute of limitations." *Commonwealth v. Chambers,* 528 Pa. 558, 580, 599 A.2d 630, 641 (1991), *cert. denied,* 504 U.S. 946, 112 S.Ct. 2290, 119 L.Ed.2d 214 (1992). In the instant

case, the Commonwealth never asserted nor attempted to prove that Appellant's role in the murder and robbery was anything other than that of the actor. Thus, Appellant's argument is plainly without merit. Because counsel can never be considered ineffective for failing to raise a meritless claim, Appellant's claim of ineffectiveness must be rejected. *See Commonwealth v. Pettus,* 492 Pa. 558, 563, 424 A.2d 1332, 1335 (1981).

In a related argument, Appellant contends that the trial court erred in refusing his request to poll the jury in order to ascertain whether he was convicted as an accomplice or actor. The record indicates that the jury was polled as to their individual verdicts, but the trial judge refused to question each juror as to whether they found Appellant guilty as an actor or accomplice. (N.T. 11/1/88, 5-7). Appellant again relies on the erroneous premise that the jury failed to heed the trial court's warning that it was not to consider an accomplice theory of liability. Our review of the record satisfies us that the trial judge clearly and adequately explained to the jury that there was no evidence offered to prove that Appellant acted as an accomplice and that it should not inject such considerations into its deliberations.

> The purpose of the poll is to give any juror, who may possibly have been under pressure from other members of the jury to acquiesce in the verdict, an opportunity to speak out and declare to the court that the verdict as announced by the foreman was not voluntarily joined in by the answering juror.

Commonwealth ex rel. Ryan v. Banmiller, 400 Pa. 326, 328, 162 A.2d 354, 355, *cert. denied,* 364 U.S. 852, 81 S.Ct. 99, 5 L.Ed.2d 76 (1960). In the instant case, Appellant has

not alleged lack of unanimity of the verdict or that it was the product of undue pressure placed on one or more of the jurors. Accordingly, we conclude that the trial court did not err when it refused to poll the jurors on the theory upon which they convicted Appellant.

In his next allegation of error, Appellant asserts that the search warrant used to obtain evidence to link him to the crime was not supported by probable cause. The en banc Court of Common Pleas considered Appellant's challenge to the search warrant and found that

> [t]he affidavit in the present case, sworn to by a detective sergeant of the Allentown Police Department, contained sufficient averments supporting that there was a fair probability that evidence of a crime would be found in the defendant's room. The averments in the affidavit contained a general description and location of the crime and victim, as well as the fruits from what was properly believed to be a burglary and/or robbery, as well as the criminal homicide. The affidavit placed the defendant not only at the scene of the crime earlier that evening but also sets forth the fact that entry into the premises was gained by opening a window in the bathroom of the premises from the inside and that the defendant was seen going into the bathroom on a number of occasions that evening. Moreover, the detective sergeant observed a bloody footprint tread near the location of the victim's body, which pattern of tread was recognized to be similar to the one on the sneakers worn by the defendant when the police officer had interviewed him a short time prior to the execution of the affidavit. Lastly, the affidavit revealed that the defendant had checked into the room sought to be searched by using a fictitious name at a time when the defendant had told the police officer that he was at a different location. Lastly [sic], the affidavit set forth that, approximately two months' [sic] before the criminal homicide, the defendant had been hiding in the victim's bar after hours.

Commonwealth v. Rompilla, No. 682/1988, slip op. at 8-9 (C.P. Lehigh County March 12, 1993) (en banc).

In determining the validity of a search warrant, this Court has adopted the totality of the circumstances test articulated by the United States Supreme Court in *Illinois v. Gates,* 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for ... conclud[ing] that probable cause existed."

Commonwealth v. Gray, 509 Pa. 476, 484, 503 A.2d 921, 925 (1985) (quoting *Illinois v. Gates,* 462 U.S. at 238-39, 103 S.Ct. at 2332, 76 L.Ed.2d at 548 (1983)) (citation omitted); *see also* Rule 2003(a) of the Pennsylvania Rules of Criminal Procedure ("[n]o search warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside

the affidavits"). A finding of probability of criminal activity is sufficient to support the probable cause requirement of a search warrant; a *prima facie* showing of such activity is not required. *Commonwealth v. Baker,* 532 Pa. 121, 126-27, 615 A.2d 23, 25 (1992). After reviewing the affidavit underlying the warrant and giving due deference to the conclusions of the issuing magistrate, we find that probable cause existed to support the search warrant executed on Appellant's hotel room. *Commonwealth v. Council,* 491 Pa. 434, 444, 421 A.2d 623, 628 (1980). Accordingly, Appellant's argument must be rejected as meritless.[10]

Appellant argues lastly that the trial court erred in allowing a transcript of a rape victim's testimony to be read to the jury during the sentencing phase. Appellant claims that the Commonwealth was appealing to the passions of the jury and could have utilized a different method to describe what had happened. The Commonwealth responds that it was necessary to prove that Appellant had a history of convictions for felonies involving violence and that reading the transcript of the victim's testimony was the most efficient way to present the facts of one of the prior convictions.

[10] When police entered Appellant's hotel room armed with the aforementioned search warrant, they were accompanied by a parole officer who held a parole detainer. This detainer was based on the fact that Appellant was observed drinking alcohol in violation of one of his conditions of parole. Appellant maintains that the presence of the parole officer was a pretext because the search warrant executed on his hotel room was not based on probable cause. Based on our finding that the search warrant was supported by probable cause, we need not address this issue. We note, however, that parole officers may arrest a parolee without a warrant for violating any of the terms of his parole. *See* 61 P.S. § 331.27

Our review of the record affirms the Commonwealth's contention that the reading of the victim's testimony was necessary to support the aggravating circumstance found under 42 Pa.C.S. § 9711(d)(9).[11] Appellant had previously been convicted of theft, burglary, and rape. Prior to the sentencing hearing, defense counsel attempted to have the burglary conviction excluded from the jury's consideration based upon this Court's decision in *Commonwealth v. Christy,* 511 Pa. 490, 515 A.2d 832 (1986), *cert. denied,* 481 U.S. 1059, 107 S.Ct. 2202, 95 L.Ed.2d 857 (1987). In *Christy,* this Court held that the trial court had erred in submitting a burglary conviction to the jury for purposes of 42 Pa.C.S. § 9711(d)(9) because the Commonwealth failed to present evidence that the conviction involved the threat or use of violence. *Id.* 511 Pa. at 507-08, 515 A.2d at 840-41. We concluded that "[i]n order for a felony to be includable under 42 Pa.C.S. § 9711(d)(9), the Commonwealth must present evidence that the defendant actually threatened another with violence or actually used violence on another." *Id.* at 508, 515 A.2d at 841.

In *Commonwealth v. Goins,* 508 Pa. 270, 495 A.2d 527 (1985), this Court held that a single felony conviction for a crime of violence does not suffice to establish a significant history under 42 Pa.C.S. § 9711(d)(9). In the instant case, a rape conviction was the only felony for which Appellant was convicted that clearly involved the use of violence. Thus, the Commonwealth had to show that a threat of violence or actual violence was used in the commission of

[11] 42 Pa.C.S. § 9711(d)(9) provides that an aggravating circumstance can be found by the jury where "[t]he defendant has a significant history of felony convictions involving the use or threat of violence to the person."

the burglary in order to establish a felony history under 42 Pa.C.S. § 9711(d)(9). In order to achieve that end, the Commonwealth had the testimony of the rape victim read into the record because the burglary involving the use of violence was part of the same episode.[12] By having an assistant district attorney read from a transcript, we believe that the Commonwealth presented the facts of Appellant's prior crime in a way that minimized the inflammatory impact of his prior crimes to the jury. Accordingly, we conclude that the trial court did not err in allowing the Commonwealth to present evidence of Appellant's prior crime through the reading of the victim's testimony.

Finally, it is our statutory duty to insure that the jury's sentence is based upon the facts presented at the sentencing hearing. *See* 42 Pa.C.S. § 9711(h). Our review of the record in this case satisfies us that the sentence imposed by the jury was not the product of passion, prejudice, or any other arbitrary factor. The record also supports the jury's finding of the aggravating circumstances set forth in 42 Pa.C.S. § 9711(d)(6), (8) and (9).[13]

[12] Appellant had broken into the victim's apartment which was located above a bar. According to the victim's testimony, Appellant initially entered the apartment in the belief that she kept a large sum of money there. (N.T. 11/1/88, 75-76). After discovering that the money was located in the bar's cash register, Appellant and the victim proceeded downstairs where he stole the money from the register. (N.T. 11/1/88, 78- 80). Appellant then brought the victim back up to the apartment and raped her at knifepoint. (N.T. 11/1/88, 82-90).

[13] The aggravating circumstances found by the jury were that "[t]he defendant committed a killing while in the perpetration of a felony," that "[t]he offense was committed by means of torture," and that "[t]he defendant has a significant history of felony convictions involving the use or threat of violence to the person." 42 Pa.C.S. § 9711(d)(6), (8) and (9), respectively.

Appellant killed his victim during the commission of the burglary and robbery of the victim's tavern. Moreover, the manner in which Appellant carried out this brutal murder is sufficient to support a finding that the killing was committed by means of torture. "In order to establish the aggravating circumstance of torture, the Commonwealth must prove that the defendant had a specific intent to inflict 'a considerable amount of pain and suffering on a victim which is unnecessarily heinous, atrocious, or cruel manifesting exceptional depravity.'" *Commonwealth v. Daniels,* 537 Pa. 464, 473, 644 A.2d 1175, 1180 (1994) (quoting *Commonwealth v. Thomas,* 522 Pa. 256, 277, 561 A.2d 699, 709 (1989); *Commonwealth v. Pursell,* 508 Pa. 212, 239, 495 A.2d 183, 196 (1985)). In the instant case, Dr. Isidore Mihalakis, a forensic pathologist, testified at the sentencing hearing that the victim was alive during the infliction of almost all of the injuries that he received. (N.T. 11/1/88, 101). These injuries included abrasions, lacerations, blunt force injuries, a fractured nose, and multiple stab wounds. (N.T. 11/1/88, 102). Dr. Mihalakis further testified that the number and location of the various wounds on the victim's body were indicative of injuries that were inflicted with the intent of causing pain. (N.T. 11/1/88, 110). Thus, there is ample evidence on the record to support the jury's finding of torture in this case. Lastly, with respect to Appellant's history of felony convictions involving the use of violence, the record fully supports the jury's finding. In addition to a rape conviction, Appellant was convicted of burglary in which he brandished and used a knife to harm his victim.

The information compiled by the Administrative Office of Pennsylvania Courts indicates that the sentence

imposed in this case is not disproportionate to the sentence imposed in similar cases.

Accordingly, the judgment of sentence is affirmed.[14]

MONTEMURO, J., is sitting by designation.

[14] The prothonotary of the Supreme Court is directed to transmit the full and complete record in this case to the Governor pursuant to 42 Pa.C.S. § 9711(i).

IN THE COURT OF COMMON PLEAS OF
LEHIGH COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
vs.	:	No. 682/1988
RONALD ROMPILLA	:	

ORDER

(Filed Aug. 23, 1996)

AND NOW, this 21st day of August, 1996, upon consideration of Defendant's Petition for Relief under the Pennsylvania Post-Conviction Relief Act, after carefully considering the briefs of the parties, and after oral argument, said Petition is DENIED and DISMISSED.

IT IS FURTHER ORDERED that the Stay of Execution, entered on August 22, 1995, is hereby LIFTED AND VACATED.

BY THE COURT:

/s/ Thomas A. Wallitsch
THOMAS A. WALLITSCH, J.

CERTIFIED FROM THE RECORD THIS 23rd DAY OF Aug. A.D. 1993 CLERK OF COMMON PLEAS CRIMINAL JUVENILE
/s/ Patricia M. Golden, DEPUTY

IN THE COURT OF COMMON PLEAS OF
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CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
vs.	:	No. 682/1988
RONALD ROMPILLA	:	

* * * * * * * * * * *

APPEARANCES: MICHAEL P. McINTYRE, ESQUIRE,
FIRST ASSISTANT DISTRICT
ATTORNEY,

For the Commonwealth

MICHAEL WISEMAN, ESQUIRE,
AND WITH HIM, PENNSYLVANIA
POST-CONVICTION DEFENDER
ORGANIZATION,

For the Defendant

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OPINION

THOMAS A. WALLITSCH, J.

Petitioner, Ronald Rompilla, was convicted of murder in the first degree and related charges on November 1, 1988, before our late colleague, the Honorable David E. Mellenberg. On November 3, 1988, the jury returned a verdict of death in the sentencing phase and sentence was immediately imposed. After Mr. Rompilla's conviction and sentence were affirmed by the Pennsylvania Supreme Court, *Commonwealth v. Rompilla*, 539 Pa. 499, 653 A.2d 626 (1995), and after this court granted a stay of execution,

Mr. Rompilla filed this Petition for Relief under the Pennsylvania Post-Conviction Relief Act. On March 28, 1996, a hearing on this petition was held, and deposition transcripts were subsequently filed. Petitioner alleges numerous grounds for relief, all of which we reject.

Mr. Rompilla's first argument is that his right to due process of law was violated when the trial judge refused to answer the jury's question about Mr. Rompilla's parole eligibility. During the penalty phase of the trial, the trial judge did not inform the jury that in Pennsylvania "life imprisonment" actually means life imprisonment without the possibility of parole. During jury deliberations on the penalty phase, the jury asked the following question: "If a life sentence is imposed, is there any possibility of the Defendant ever being paroled?". The trial court did not directly answer that question but, instead, told the jury not to consider the issue of parole. Mr. Rompilla challenges the trial court's action in this regard despite the fact that Pennsylvania law on this issue is clear. *Commonwealth v. Strong*, 522 Pa. 445, 563 A.2d 479 (1989); *Commonwealth v. Edwards*, 521 Pa. 134, 555 A.2d 818 (1989).

Mr. Rompilla relies on the case of *Simmons v. South Carolina*, ___ U.S. ___, 114 S.Ct. 2187, 129 L. Ed. 2d 133 (1994), for the proposition that the trial judge's refusal to instruct that parole was not a possibility violates his federal constitutional right to due process. We believe that *Simmons v. South Carolina* is distinguishable from the facts of this case and therefore will not apply it to reverse the sentence imposed. In *Simmons*, the prosecution in its closing argument argued that the defendant's future dangerousness was a factor for the jury to consider when fixing the appropriate punishment. The prosecutor urged that a verdict for death would be "a response of society to

someone who is a threat. Your verdict will be an act of self-defense." There was no such argument in Mr. Rompilla's trial. The prosecution merely argued that Mr. Rompilla had a significant history of felony convictions which was proper argument as an aggravating factor under Pennsylvania law. Rompilla argues that the jury did not abide by the trial court's instruction that it must not consider the possibility of parole in its deliberations. Rompilla points to the fact that subsequently, the jury requested exhibits that were docket entries relating to Rompilla's prior conviction for burglary and rape. Such a request is no evidence that the jury did not abide by the trial court's instruction since the exhibits requested would shed no light on whether or not a defendant sentenced to life imprisonment would ever have the possibility of being paroled. Also, it must be presumed that the jury followed the trial court's instructions. *Commonwealth v. Travaglia*, 541 Pa. 108, 661 A.2d 352 (1995); *Commonwealth v. Stoltzfus*, 462 Pa. 43, 337 A.2d 873 (1975). Mr. Rompilla's argument in this regard is nothing more than conjecture without any proof which would overcome the presumption that the jury followed the trial judge's instructions.

Rompilla further argues that subsequent questions by the jury supports his position. The jury asked, "was the Defendant offered any type for (sic) rehabilitation either while in prison or after his release from prison?" Again, the trial court answered that he could not give them such information. This question by the jury relates more to the issues raised by the defense witnesses during the penalty phase who complained that Mr. Rompilla had not received rehabilitation while in prison and while on parole after his 1974 rape and burglary convictions. In fact, that was a

mitigating factor found by the jury rather than an aggravating factor.

Rompilla next argues that the trial court's instruction on the aggravating circumstance of torture was vague, overbroad, and erroneous, therefore being violative of his constitutional rights. The jury found the existence of an aggravating circumstance in that the offense was committed by the means of torture. The trial judge instructed as follows:

> The second aggravating circumstance advanced by the Commonwealth was that the offense was committed by means of torture. The word "torture" is generally understood as the infliction of a considerable amount of pain and suffering on a victim which is unnecessarily hiatus [sic][1], atrocious or cruel, manifesting exceptional depravity. There must of necessity be more than a mere intent to kill to be an aggravating circumstance, the law requires an intent to cause pain and suffering in addition to the intent to kill. There must be an indication that the killing is not – the killer is not satisfied with the killing alone.

The trial court's instruction was proper and was not unconstitutionally vague under the Pennsylvania Supreme Court holding of *Commonwealth v. Pursell*, 508 Pa. 212, 495 A.2d 183 (1985). The Pennsylvania Supreme Court has continued to uphold the constitutionality of this aggravating factor with instructions just as provided by the trial judge in this case. *Commonwealth v. Jacobs*, 536 Pa. 402, 639 A.2d 786 (1994).

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[1] This is an obvious typographical mistake, the word "heinous" is what was actually said.

Rompilla next argues that trial counsel was ineffective in the penalty phase for failing to investigate, develop and present significant mitigating evidence relating to his childhood and the possibility of an organic brain defect. On the issue of ineffective assistance of trial counsel, the court held a hearing and received the deposition testimony of various individuals. Mr. Rompilla presented the testimony of Dr. Barry Crown, a psychologist, who testified that Mr. Rompilla has brain damage. He opined that this brain damage occurred early in Mr. Rompilla's life, perhaps in utero. Also presented was the deposition testimony of Carol L. Armstrong, Ph.D., a neuropsychologist, who concluded that Mr. Rompilla had organic brain impairment. Rompilla also submitted affidavits and testimony from his [sic] some of his siblings who testified concerning dysfunction in the family during his childhood years. Rompilla argues that trial counsel did not take reasonable steps to gain information which would have revealed these mental deficiencies and abusive childhood that may have lead [sic] a jury to impose a sentence of life imprisonment.

In order to prevail upon a claim of ineffective assistance of counsel, a post-conviction petitioner must demonstrate (1) deficient performance and (2) prejudice. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). Under Pennsylvania law, there is a three prong test to be used in reviewing a claim of ineffectiveness of counsel which were summarized in *Commonwealth v. Buehl,* 540 Pa. 493, 658 A.2d 771 (1995):

> First, a defendant must demonstrate that his claim is of arguable merit. In the event this threshold requirement is satisfied, a defendant must show that counsel had no reasonable basis for the act or omission in question. Finally, a defendant must establish that but for counsel's act or omission, the outcome of the proceedings would have been different.

While we believe that the first prong has been met since the defendant is entitled to have relevant information of mental infirmity presented to a jury in the penalty phase of a capital case, we find that counsel had a reasonable basis for proceeding as they did during the penalty phase.

Rompilla argues that the two experts who were hired by the defense, Dr. Robert Sadoff and Dr. Gerald Cooke did not have all the relevant information in order for them to have rendered an informed and proper opinion as to the mental status of Mr. Rompilla. Secondly, Rompilla argues that his family was not asked sufficient questions about his background which precluded the introduction of certain mitigating factors to this theory.

Rompilla's first argument is that he suffered brain damage, as opined by Drs. Crown and Armstrong, and that Drs. Cook and Sadoff did not also come to that conclusion because they were not provided with necessary information. Counsel did employ two recognized experts in the field of psychiatry and psychology, Dr. Sadoff and Dr. Cooke, respectively. These experts administered tests, evaluated Mr. Rompilla, and reported back to defense counsel that there was nothing that could be used in mitigation and that there was no organic brain damage. Instead, defense counsel was told that Mr. Rompilla was diagnosed as a sociopath and that information would not have been of benefit to Mr. Rompilla's case. While it is true that defense counsel did not secure Mr. Rompilla's records from his school days to provide to Drs. Cooke and Sadoff, it is also true that these experts did not request them.

Counsel provided Drs. Cooke and Sadoff with whatever they asked for. It is also true that those records were not entirely helpful to Mr. Rompilla's case. While they did reveal a low IQ, low IQ can simply be part of the bell curve and a learning disability is not necessarily caused by an organic defect. Moreover, nothing that trial counsel was able to glean from Mr. Rompilla prior to trial was particularly useful, nor was it consistent to what he now says was his background. We accept the testimony of trial counsel that they spoke with members of the family in a detailed manner and that what now is claimed by them in support of Mr. Rompilla's Post-Conviction Relief Act conviction was not revealed to defense counsel at time of trial.

It must also be noted that Mr. Rompilla made contradictory statements to his counsel during the course of their representation of him and none included any indication of any mental problems or alcoholic blackouts. Defense counsel was reasonable in believing that the only avenue available to them was to ask the jury to show mercy upon Mr. Rompilla, asking them to be more humane than they found Mr. Rompilla to be. Under the circumstances of this case, this strategy was not only an appropriate one, but the only one reasonably available to counsel.

Defense counsel also obtained an evaluation by Dr. Paul Gross, a well respected Lehigh Valley psychiatrist. Dr. Gross evaluated Mr. Rompilla and found nothing that would have been beneficial in the penalty phase. Given the fact that three health care professionals, all of whom were experienced forensic experts, had provided opinions to defense counsel, and none of them asked for more information, it was hardly unreasonable or ineffective for defense counsel to have relied upon their opinions. We also reject the testimony of Rompilla's family members who attempted

to contradict what defense counsel indicated was asked of them during numerous communications prior to the trial. In summary, we find that there was a reasonable basis for the actions taken by defense counsel during the penalty phase of this trial and find no ineffective assistance of counsel.

Rompilla next argues that he was denied due process of law by the prosecutor injecting his personal opinion that the death penalty was appropriate. We have carefully reviewed the brief summation given by the prosecutor in the penalty phase and find that his argument was not violative of our law. He did not set forth his personal opinion that the jury should sentence Mr. Rompilla to death. While Rompilla argues that the prosecutor's comment that "[i]t's not easy for me to argue the death penalty. . . . " reflected his personal opinion, we reject such argument. Under the holding of such cases as *Commonwealth v. Peoples,* 536 Pa. 326, 639 A.2d 448 (1994), *Commonwealth v. Marshall,* 534 Pa. 488, 633 A.2d 1100 (1993), and *Commonwealth v. Basemore,* 525 Pa. 512, 582 A.2d 861 (1990), the prosecutor's comments were proper. The prosecutor's comment that the death penalty was appropriate in this particular instance was also proper argument under *Commonwealth v. Meadows,* 534 Pa. 450, 633 A.2d 1081 (1993) and *Commonwealth v. Sneed,* 514 Pa. 597, 526 A.2d 749 (1987)

The prosecutor did make brief comment upon the inability of the victim's family to take the stand and communicate their feelings with regard to the death of the victim, as compared to the right of the Defendant's family to take the stand and share their feelings, we do not believe that these comments are sufficiently inappropriate to constitute prosecutorial misconduct under *Travaglia*

and *Basemore, supra.* For all of these reasons, we do not believe that there has been prosecutorial misconduct that would justify a reversal of the sentence imposed by the jury.

The next argument propounded by Rompilla is that the uncertainty whether burglary was a violent crime for the purpose of constituting a significant history of violent felony convictions which would constitute an aggravating circumstance created a violation of the petitioner's due process rights. Rompilla claims that irreconcilable rulings of the Pennsylvania Supreme Court on the issue of whether burglary is always a violent felony for the purposes of the (d) (9) aggravating circumstance constitute arbitrariness and capriciousness which is a violation of the Defendant's due process of federal constitutional rights. We disagree and believe that the Supreme Court in *Commonwealth v. Rompilla, supra,* adequately addressed this question.

Rompilla next argues that trial counsel were ineffective at the penalty phase when they failed to argue the existence of the mitigating factor that Rompilla's participation in the homicidal act was relatively minor. We disagree. Rompilla argues that there was evidence at trial that he did not act alone and that, despite his presence at the scene, someone else did the actual killing. Rompilla argues that, therefore, counsel should have argued that his role was relatively minor.

When trial counsel testified at the time of the PCRA hearing, it was persuasively elicited that, after arguing during the liability phase that Rompilla was not at the scene of the crime when the murder occurred, to change the story and argue during the penalty phase that he was

there, but did not do the actual killing, would likely make the jury angry, thereby eliminating any chance of him receiving a life sentence. That was certainly a reasonable trial tactic and, in fact, had trial counsel done what Rompilla now suggests should have been done, and the verdict still the same, Rompilla would have been justified in complaining that such inconsistent argument constituted ineffectiveness. We are convinced that trial counsel acted appropriately in this regard.

The next argument is that the trial judge erred in telling the jury that there was no evidence to support an "accomplice" theory of liability after saying that they could consider such a theory. This issue was decided by the Pennsylvania Supreme Court in *Rompilla* and therefore will not be again addressed here.

Rompilla's argument that the aggravating circumstance found of a "significant" history of felony convictions involving the use or threat of violence is unconstitutionally vague has been decided against him in numerous Pennsylvania Supreme Court cases. *See Commonwealth v. Rivers,* 537 Pa. 394, 644 A.2d 710 (1994); *Commonwealth v. Fahy,* 512 Pa. 298, 516 A.2d 689 (1986); *Commonwealth v. Holcomb,* 508 Pa. 425, 498 A.2d 833 (1985); and *Commonwealth v. Beasley,* 504 Pa. 485, 475 A.2d 730 (1984). Moreover, the holdings in these cases are consistent with decisions of the United States Supreme Court in *Tuilaepa v. California,* ___ U.S. ___, 114 S.Ct. 2630, 129 L. Ed. 2d 750 (1994) and *Proffitt v. Florida,* 428 U.S. 242, 96 S.Ct. 2960 (1976). Therefore, we find against Rompilla on this issue as well.

Mr. Rompilla's next argument is similar to the claim made in his ineffective assistance of counsel claim. He

alleges that he was not afforded a reliable evaluation of his impaired medical health by the experts hired by his counsel. We find that Mr. Rompilla, through his counsel, was afforded the services of three respected forensic experts who had the ability to do a complete evaluation and examination of Mr. Rompilla. We further do not believe that there is any existing case law which would grant Mr. Rompilla relief based upon his allegations that his forensic experts were ineffective.

Rompilla's last argument is that certain discussions about lesser-included offenses and length of summations were held without the presence of the Defendant but, instead, between the trial judge and counsel. We do not believe that such discussions could be considered "critical" to the outcome and we find that Defendant's presence at such discussions would not contribute to the fairness of the trial. They were essentially "housekeeping" discussions that did not, and could not, affect his fair trial. We do not believe that such discussions are critical phases of the trial under *Kentucky v. Stincer,* 482 U.S. 730, 107 S. Ct. 2658 (1987), or under Pa. R.C.P. 1117 and *Commonwealth v. Ford,* 539 Pa. 85, 650 A.2d 433 (1994).